

BCI Exhibit 634

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 IN RE:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC. et al.,
9 Debtors.

10 -----X

11
12 HIGHLY CONFIDENTIAL
13 DEPOSITION OF KENNETH RAISLER
14 New York, New York
15 March 1, 2010
16

17
18 Reported by:

Bonnie Pruszyński, RMR

19 JOB NO. 28462
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Page 2	Page 3
<p>1 2 March 1, 2010 3 8:30 a.m. 4 5 6 Deposition of KENNETH RAISLER, Hughes 7 Hubbard & Reed, LLP, One Battery Park Plaza, 8 New York, New York, before Bonnie 9 Pruszyński, Registered Professional 10 Reporter, Registered Merit Reporter, 11 Certified LiveNote Reporter, and a Notary 12 Public of the State of New York. 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 A P P E A R A N C E S: 3 JONES DAY, LLP 4 Attorneys for Lehman Brothers, Inc. 5 222 East 41st Street 6 New York, New York 10017 7 BY: BRIDGET A. CRAWFORD, ESQ. 8 BOIES, SCHILLER & FLEXNER, LLP 9 Attorneys for Barclays 10 10 North Pearl Street, 4th Floor 11 Albany, New York 12207 12 BY: TRICIA J. BLOOMER, ESQ. 13 HUGHES HUBBARD & REED, LLP 14 Attorneys for SIPA Trustee 15 One Battery Park Plaza 16 New York, New York 10004 17 BY: NEIL J. OXFORD, ESQ. 18 QUINN EMMANUEL 19 Attorneys for the Creditors Committee 20 51 Madison Avenue 21 New York, New York 10010 22 BY: ERIC M. KAY, ESQ. 23 24 25</p>
Page 4	Page 5
<p>1 2 A P P E A R A N C E S (continued): 3 SULLIVAN & CROMWELL, LLP 4 Attorneys for the Witness 5 125 Broad Street 6 New York, New York 10004 7 BY: ROBINSON B. LACY, ESQ. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 Confidential - K. Raisler 2 KENNETH RAISLER, 3 called as a witness, having been first 4 duly sworn, was examined and testified 5 as follows: 6 EXAMINATION 7 BY MR. OXFORD: 8 Q Good morning, Mr. Raisler. 9 A Good morning. 10 Q As you know, my name is Neil Oxford. 11 I'm with the law firm of Hughes Hubbard & Reed. 12 We represent the SIPA trustee in this matter. 13 I'm here to take your deposition 14 today particularly in connection with a 15 declaration you submitted in support of Barclays' 16 opposition papers. 17 (Exhibit 658A marked for 18 identification as of this date.) 19 Q You have in front of you what I have 20 marked as Exhibit 658-A, sir. 21 Do you recognize that document, sir? 22 A Yes, I do. 23 Q Is that in fact your declaration that 24 you submitted in support of Barclays' opposition 25 papers in this matter?</p>

Page 6	Page 7
<p>1 Confidential - K. Raisler</p> <p>2 A Yes, it is.</p> <p>3 Q In paragraph three of your</p> <p>4 declaration, Mr. Raisler, you describe very</p> <p>5 generally that you were involved in meetings and</p> <p>6 discussions between LBI and Barclays personnel</p> <p>7 concerning a potential acquisition by Barclays of</p> <p>8 LBI's proprietary futures business as well as its</p> <p>9 business as a futures commission merchant; is that</p> <p>10 correct?</p> <p>11 A Correct.</p> <p>12 Q What I would like to do is drill down</p> <p>13 a little further into those generalities, sir.</p> <p>14 Sullivan & Cromwell was first engaged</p> <p>15 by Barclays in connection with this matter on</p> <p>16 September 15th; is that correct?</p> <p>17 A No, actually on the 14th.</p> <p>18 Q How was it that Sullivan & Cromwell</p> <p>19 first became engaged, sir?</p> <p>20 A I don't remember precisely, but I do</p> <p>21 recall we had -- I had some phone calls with, with</p> <p>22 representative of Barclays --</p> <p>23 MS. BLOOMER: I'm just going to</p> <p>24 object and instruct the witness not to</p> <p>25 reveal the substance of the communications.</p>	<p>1 Confidential - K. Raisler</p> <p>2 A -- in the afternoon and evening of</p> <p>3 Sunday, September 14th. I believe that was the</p> <p>4 first time that we were involved. It certainly</p> <p>5 was the first time I was involved.</p> <p>6 Q Other than representatives of</p> <p>7 Barclay, Mr. Raisler, was anybody else on those</p> <p>8 telephone calls on Sunday, the 14th of September?</p> <p>9 A Other than representatives of</p> <p>10 Sullivan & Cromwell and Barclays, no.</p> <p>11 Q When was the first time, Mr. Raisler,</p> <p>12 that you were involved in a meeting between Lehman</p> <p>13 and Barclays personnel concerning the potential</p> <p>14 acquisition by Barclays of any part of Lehman's</p> <p>15 futures business? And I should broaden my</p> <p>16 question. Not just meetings. I'm inquiring about</p> <p>17 any conference calls as well.</p> <p>18 A The morning of September 15th.</p> <p>19 Q Can you tell me about that meeting,</p> <p>20 please, sir? Well, withdrawn.</p> <p>21 Was that a meeting or a conference</p> <p>22 call?</p> <p>23 A It was a meeting, and it was a</p> <p>24 meeting that lasted most of the day, to my best</p> <p>25 recollection.</p>
Page 8	Page 9
<p>1 Confidential - K. Raisler</p> <p>2 Q Where did it take place?</p> <p>3 A Again, this is only a recollection,</p> <p>4 but I think it was at Lehman's offices on 7th</p> <p>5 Avenue.</p> <p>6 Q Do you remember approximately when it</p> <p>7 started, sir?</p> <p>8 A I really don't recall. I have some</p> <p>9 vague recollection that we had a pre-meeting at</p> <p>10 Barclays before we went over to Lehman, but I am</p> <p>11 not sure that is right.</p> <p>12 Q To your recollection, sir, did the</p> <p>13 meeting with the Lehman folks start in the morning</p> <p>14 or the afternoon?</p> <p>15 A Definitely in the morning.</p> <p>16 Q And the meeting lasted, you said,</p> <p>17 most of the day. Approximately when do you think</p> <p>18 it finished?</p> <p>19 A The problem I have, and I should</p> <p>20 probably get this on the record early, the week is</p> <p>21 sort of a blur because there were meetings going</p> <p>22 on steadily the whole week, so, when meetings</p> <p>23 ended and when meetings started becomes sort of a</p> <p>24 disconnect for me.</p> <p>25 My best guess was late in the</p>	<p>1 Confidential - K. Raisler</p> <p>2 afternoon into the early evening.</p> <p>3 Q To the best of your recollection,</p> <p>4 sir, who was in attendance at that meeting?</p> <p>5 A Here again, there is a certain amount</p> <p>6 of vagueness in my recollection. Obviously</p> <p>7 representatives of Sullivan & Cromwell.</p> <p>8 Q Maybe it's easier to break it down,</p> <p>9 sir.</p> <p>10 A Right.</p> <p>11 Q Who else was there from Sullivan &</p> <p>12 Cromwell apart from you, sir?</p> <p>13 A I think on that day it may have only</p> <p>14 been me.</p> <p>15 Representatives from Barclays.</p> <p>16 Q Who were the representatives from</p> <p>17 Barclays, sir?</p> <p>18 A Again, it's a little bit of a blur,</p> <p>19 but my best guess would be Tim Stack, Liz James,</p> <p>20 Alex Guest. Those are the only ones I am sure of.</p> <p>21 I know there were more than that in the room, but</p> <p>22 I just don't remember who they were.</p> <p>23 Q Do you remember the names,</p> <p>24 Mr. Raisler, of the Lehman representatives who</p> <p>25 were present at that meeting on the 15th?</p>

Page 10	Page 11
<p>1 Confidential - K. Raisler</p> <p>2 A The only person I precisely remember</p> <p>3 was Jeff Jennings. Again, there were more people</p> <p>4 from Lehman than that in the room.</p> <p>5 Q Do you remember what Mr. Jennings'</p> <p>6 role or title was at Lehman?</p> <p>7 A He ran the futures division for</p> <p>8 Lehman.</p> <p>9 If I can just amend my prior answer.</p> <p>10 I also recall, I believe, that a gentleman by the</p> <p>11 name of Ron Filler was in the room as well.</p> <p>12 Q Who was Mr. Filler representing?</p> <p>13 A Ron was a consultant for Lehman. He</p> <p>14 had run their futures division up until May of</p> <p>15 2008, when he retired, and was brought back to</p> <p>16 help on this transaction.</p> <p>17 Q To your understanding, sir, what was</p> <p>18 the purpose of this meeting on the 15th?</p> <p>19 A It was to explore what was involved</p> <p>20 in taking over the futures and futures-related</p> <p>21 businesses of Lehman by Barclays.</p> <p>22 Q As of September 15th, Mr. Raisler,</p> <p>23 did you have an understanding as to the</p> <p>24 interactions, if any, or the relationship, if any,</p> <p>25 between Barclays' consideration to purchase the</p>	<p>1 Confidential - K. Raisler</p> <p>2 futures business of Lehman, and the potential</p> <p>3 purchase by Barclays of other assets of the Lehman</p> <p>4 broker dealer?</p> <p>5 MS. BLOOMER: I am going to object</p> <p>6 and just instruct the witness to be sure --</p> <p>7 I will do this throughout the day when</p> <p>8 questions seem to call for it. As a general</p> <p>9 matter, please do not convey the substance</p> <p>10 of the discussions you had with counsel or</p> <p>11 with Barclays.</p> <p>12 I apologize. Go ahead.</p> <p>13 A At a high level, yes. I generally</p> <p>14 knew there were other lawyers at Sullivan &</p> <p>15 Cromwell working on a bigger transaction, and I</p> <p>16 also knew that Cleary Gottlieb was involved in a</p> <p>17 broader transaction, but I really was far from the</p> <p>18 details of that.</p> <p>19 Q Were you involved, Mr. Raisler, at</p> <p>20 any time prior to the closing of the transaction</p> <p>21 before the markets opened on the 22nd of</p> <p>22 September, in any aspect of the, what I will call</p> <p>23 the broader purchase of assets from Lehman, other</p> <p>24 than the futures business?</p> <p>25 MS. BLOOMER: Objection to form.</p>
Page 12	Page 13
<p>1 Confidential - K. Raisler</p> <p>2 A The only other aspect related to the</p> <p>3 business, the options business, of Lehman and, in</p> <p>4 particular, dealings with the OCC.</p> <p>5 Q Do you have any notes of your meeting</p> <p>6 from the 15th, sir?</p> <p>7 A I do not.</p> <p>8 Q Is it your routine practice to take</p> <p>9 notes at such meetings?</p> <p>10 A Actually, it's my routine practice</p> <p>11 not to take notes. I very rarely take notes of</p> <p>12 anything.</p> <p>13 Q You said, Mr. Raisler, that the</p> <p>14 purpose of the meeting was to explore what would</p> <p>15 be involved in Barclays taking over the futures</p> <p>16 and futures-related business of Lehman. Can you</p> <p>17 be a little more specific about the discussions in</p> <p>18 that regard, sir?</p> <p>19 A To not distinguish the events of the</p> <p>20 15th specifically from the events of the days that</p> <p>21 followed, we were looking at and engaging in due</p> <p>22 diligence to explore a transfer of all of the</p> <p>23 futures accounts and related assets of Lehman to</p> <p>24 Barclays.</p> <p>25 Q Was it your understanding, sir, that</p>	<p>1 Confidential - K. Raisler</p> <p>2 a business agreement had been reached between</p> <p>3 Lehman and Barclays to transfer the assets that</p> <p>4 you referenced in your prior answer?</p> <p>5 MS. BLOOMER: Objection to the form,</p> <p>6 vague as to time frame.</p> <p>7 A As of what time would that -- as of</p> <p>8 the 15th, no.</p> <p>9 Q Did you at any time, Mr. Raisler,</p> <p>10 come to learn that a business deal had been</p> <p>11 reached between Lehman and Barclays to purchase</p> <p>12 any assets related to Lehman's futures business?</p> <p>13 A I was vaguely familiar with the</p> <p>14 negotiation of the asset purchase agreement. I</p> <p>15 don't know that it influenced what I was doing in</p> <p>16 any meaningful way during the course of that week.</p> <p>17 Q How was it, sir, that you were</p> <p>18 familiar with the negotiations of the asset</p> <p>19 purchase agreement?</p> <p>20 MS. BLOOMER: Objection. Just</p> <p>21 instructing the witness not to disclose the</p> <p>22 substance of communications with Barclays.</p> <p>23 A Can I have your question read back,</p> <p>24 please?</p> <p>25 Q Sure.</p>

Page 14	Page 15
<p>1 Confidential - K. Raisler 2 (Record read.) 3 A To be clear, I wasn't -- I wasn't 4 familiar with the negotiations of it per se. I 5 was familiar that there had been some kind of an 6 agreement entered into. And I would have learned 7 that from counsel. 8 Q From counsel for whom, sir? 9 A Most likely, other colleagues at 10 Sullivan & Cromwell. 11 Q Do you know when you learned that 12 information, sir? 13 A Again, somewhat of a blur, but likely 14 on the 16th or 17th. 15 Q Do you say that because you 16 understand that the asset purchase agreement was 17 finalized and signed around that time period? 18 MS. BLOOMER: Objection, form, 19 mischaracterizes his testimony. 20 A No. I think I learned of it then. 21 Q Is it fair to characterize the 22 meetings that you were in, sir, as due diligence 23 meetings rather than meetings in which the 24 negotiations of the underlying business deal 25 between Barclays and Lehman in connection with the</p>	<p>1 Confidential - K. Raisler 2 futures business took place? 3 MS. BLOOMER: Objection to form. 4 A I would certainly agree it was not 5 the latter. 6 Q So you weren't involved, sir, in any 7 negotiations of the business deal as -- as it 8 related to Barclays' purchase of Lehman's futures 9 business? 10 A To my best recollection, I was not 11 involved at all in that. I believe in answering 12 your earlier question, I would have characterized 13 it as due diligence in a very broad sense as what 14 these meetings were about. 15 Q What, what is the reason for your 16 qualification, sir? 17 A I think people have different 18 definitions of due diligence, and I am sure we are 19 going to get to an opportunity to discuss in more 20 detail what I did. I don't know. Some people 21 might have described what I was doing as due 22 diligence. Some people might have described it as 23 sort of something else. So I just want to leave 24 some latitude for that explanation. 25 Q Do you have any recollection, sir, of</p>
Page 16	Page 17
<p>1 Confidential - K. Raisler 2 the information that Barclays requested during 3 that meeting on the 15th? 4 A Again, the meetings for me blur 5 during the course of the 15th versus 16th versus 6 17th. 7 I believe that among the information 8 that was being requested was the exchanges on 9 which Lehman had positions, either proprietary or 10 customer; the regulators that they were dealing 11 with around the world, and, broadly stated, the 12 information around the positions and assets that 13 were held in those markets. 14 Q During that meeting on the 15th, sir, 15 were the representatives of Lehman able to provide 16 some or all of the information that you have just 17 described as requested by Barclays? 18 A Only at the very highest level. I 19 believe we started to collect information about 20 the markets that they were in, whether they were 21 clearing members in those markets or cleared 22 through third parties, and regulators that they 23 had dealt with. 24 To be clear, the information was 25 dramatically incomplete.</p>	<p>1 Confidential - K. Raisler 2 Q Lehman was unable to provide a list 3 of the markets in which it was a clearing member? 4 A There was vagueness and uncertainty 5 about that in certain markets around the world. 6 Q Was Lehman able to provide any 7 information about the markets in which it was a 8 clearing member? 9 A Yes, certainly it did provide 10 information, although it, too, was incomplete, 11 about markets in the U.S. 12 Q In what regard was the information 13 incomplete, sir? 14 A Well, it was able to provide us with 15 information as to where it was a clearing member. 16 It was not be able to tell us whether it had any 17 positions in those markets where it was a clearing 18 member, or the size and contours of those 19 positions. 20 Q Do you have an understanding of why 21 Lehman was unable to provide the information about 22 the positions or the size or contours of those 23 positions? 24 A Only at the most general level. The 25 impression I had was that the days leading up to</p>

Page 18	Page 19
<p>1 Confidential - K. Raisler</p> <p>2 the 15th of September had been extremely chaotic</p> <p>3 for the staff, and they just didn't have a handle</p> <p>4 on it.</p> <p>5 Q As the meetings progressed through</p> <p>6 the week of the 15th, sir, was Lehman able to</p> <p>7 provide further information about the positions in</p> <p>8 the markets in which it was a clearing member?</p> <p>9 A We did obtain more information as the</p> <p>10 week went on, yes.</p> <p>11 Q Can you tell me about that</p> <p>12 information, please.</p> <p>13 A I was delegated the responsibility to</p> <p>14 reach out to each of the exchanges and, where</p> <p>15 different, clearing houses, to establish contact</p> <p>16 and obtain information. And when I say obtain</p> <p>17 information, I am referring to basically</p> <p>18 information about what would be involved in our</p> <p>19 moving the positions from Barclays to Lehman.</p> <p>20 MR. LACY: I think you misspoke.</p> <p>21 A I'm sorry, Lehman to Barclays. Thank</p> <p>22 you. It's probably the only time I will do that</p> <p>23 today; right?</p> <p>24 Q If you only do it once, sir, you will</p> <p>25 be in a minority of one, and I will congratulate</p>	<p>1 Confidential - K. Raisler</p> <p>2 you.</p> <p>3 A And in the course of that, there were</p> <p>4 questions that I raised with Lehman officers, and</p> <p>5 that was part of the way in which we got more</p> <p>6 information.</p> <p>7 Q Which Lehman officers did you raise</p> <p>8 questions with, sir?</p> <p>9 A Well, I think mostly my recollection</p> <p>10 was with Jeff Jennings and Ron Filler.</p> <p>11 Q Who delegated the responsibility to</p> <p>12 you, Mr. Raisler, to reach out to the exchanges</p> <p>13 and clearing houses?</p> <p>14 A Probably representatives of Barclays.</p> <p>15 Q And did you reach out to all clearing</p> <p>16 organizations and exchanges of which Barclays was</p> <p>17 a member in the U.S. and outside of the U.S.?</p> <p>18 MS. BLOOMER: Did you mean Barclays</p> <p>19 there or Lehman?</p> <p>20 MR. OXFORD: Sorry, sorry. There we</p> <p>21 go. Thank you, Trish. Didn't take long.</p> <p>22 It's infectious.</p> <p>23 THE WITNESS: Right.</p> <p>24 Q Let me try that again.</p> <p>25 Did you reach out, Mr. Raisler, to</p>
Page 20	Page 21
<p>1 Confidential - K. Raisler</p> <p>2 all clearing organizations and exchanges of which</p> <p>3 Lehman was a member both in the U.S. and outside</p> <p>4 of the U.S.?</p> <p>5 A Outside the U.S., definitely no.</p> <p>6 Inside the U.S., I believe I reached out to all of</p> <p>7 them. There may have been one missing.</p> <p>8 Q Are you able, sitting here today, to</p> <p>9 give me a list of the organizations that you</p> <p>10 reached out to in this matter?</p> <p>11 A I can give you my best recollection.</p> <p>12 It would have been the Chicago Mercantile</p> <p>13 Exchange, which would have embraced the positions</p> <p>14 of its divisions, including the Chicago Board of</p> <p>15 Trade and NYMEX, ICE futures U.S., formerly known</p> <p>16 as the New York Board of Trade, the Chicago</p> <p>17 Climate Futures Exchange.</p> <p>18 I don't recall initially reaching out</p> <p>19 to the CBOE Futures Exchange because I don't</p> <p>20 believe we knew that they had any positions there</p> <p>21 for several days.</p> <p>22 I think I reached out to the Kansas</p> <p>23 City Board of Trade, even though Lehman was not a</p> <p>24 clearing member of the Kansas City Board of Trade.</p> <p>25 But we did know they had positions there.</p>	<p>1 Confidential - K. Raisler</p> <p>2 I don't recall, although I believe</p> <p>3 just an absence of memory, which non-U.S.</p> <p>4 exchanges I reached out to. As a general matter,</p> <p>5 Lehman, LBI, the entity that we were dealing with,</p> <p>6 was not a clearing member on those foreign</p> <p>7 exchanges, and that might be why I don't have a</p> <p>8 distinct memory of speaking to people about them.</p> <p>9 Q If Lehman was not a clearing member</p> <p>10 of foreign exchanges, sir, did it use a foreign</p> <p>11 FCM?</p> <p>12 A It did use a -- well, outside the</p> <p>13 U.S. they would not have been called necessarily</p> <p>14 FCMs.</p> <p>15 Q I understand.</p> <p>16 A But it would have used a clearing</p> <p>17 broker in those jurisdictions. That clearing</p> <p>18 broker could have been an affiliate, and in many</p> <p>19 cases was.</p> <p>20 Q Did you reach out to any of Lehman's</p> <p>21 clearing brokers that they used to clear futures</p> <p>22 outside of the U.S., sir?</p> <p>23 A I think that was part of the problem.</p> <p>24 Many of those, many of those clearing</p> <p>25 relationships were with affiliates. There wasn't</p>

Page 22	Page 23
<p>1 Confidential - K. Raisler</p> <p>2 anybody easily you could get ahold of to talk to</p> <p>3 about it.</p> <p>4 Q I am limiting my question to the</p> <p>5 clearing brokers outside of the U.S. who are not</p> <p>6 affiliates, sir.</p> <p>7 A Okay.</p> <p>8 Q Did you reach out to any such</p> <p>9 organizations in connection with the authority</p> <p>10 that was delegated to you by Barclays?</p> <p>11 MS. BLOOMER: Objection, vague as to</p> <p>12 time frame.</p> <p>13 A The only one I remember, and this</p> <p>14 memory is not that distinct, was Macquarie in</p> <p>15 Australia.</p> <p>16 Q What do you recall about reaching out</p> <p>17 to Macquarie in Australia, sir?</p> <p>18 A Just an attempt to try to find</p> <p>19 information about what they knew about the</p> <p>20 positions in the markets in Australia.</p> <p>21 Q Do you remember if that attempt was</p> <p>22 successful, sir?</p> <p>23 A I remember it as not being</p> <p>24 successful. We didn't get a very good report from</p> <p>25 them as to what was going on.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Just to elaborate a bit, I also</p> <p>3 believe that Ron Filler was reaching out to some</p> <p>4 of the foreign clearing relationships during the</p> <p>5 same time period and reporting back as well.</p> <p>6 Q Reporting back to whom, sir?</p> <p>7 A This group meeting that started on</p> <p>8 Monday and sort of went through the week of</p> <p>9 Barclays and Lehman representatives.</p> <p>10 Q Did you reach out, Mr. Raisler, to</p> <p>11 any Lehman affiliates who acted as clearing</p> <p>12 brokers outside of the U.S.?</p> <p>13 A To my best recollection, I did not.</p> <p>14 Q Do you know if anybody else did reach</p> <p>15 out to Lehman clearing affiliates?</p> <p>16 A If anybody had, it probably would</p> <p>17 have been Filler. But I don't remember -- I guess</p> <p>18 I don't remember much by way of results there, so</p> <p>19 I don't know whether attempts were made or not.</p> <p>20 Q How was it that you reached out to</p> <p>21 the clearing organizations and exchanges in the</p> <p>22 U.S., sir? Did you have a telephone call with</p> <p>23 them? Did you e-mail them?</p> <p>24 A In each case, it would have been by</p> <p>25 phone. I would have spoken to any number of</p>
Page 24	Page 25
<p>1 Confidential - K. Raisler</p> <p>2 people within those organizations, usually in the</p> <p>3 first instance through the general counsel's</p> <p>4 office.</p> <p>5 Q Turning first to the CME, sir, were</p> <p>6 you able to obtain any information by reaching out</p> <p>7 to the CME about what would be involved in moving</p> <p>8 the Lehman positions to Barclays?</p> <p>9 A Yes. I would say the CME was</p> <p>10 probably the most transparent and cooperative, the</p> <p>11 one most anxious to make sure it went smoothly.</p> <p>12 Q Did you have a primary contact at the</p> <p>13 CME, sir?</p> <p>14 A Probably two people. It would have</p> <p>15 been Jerry Salzman, who is the outside counsel to</p> <p>16 the CME.</p> <p>17 Q Is he at Skadden?</p> <p>18 A He is currently, yes.</p> <p>19 Q Was he with Skadden at the time?</p> <p>20 A I am not sure. He had his own firm</p> <p>21 and moved over to Skadden around that time. I</p> <p>22 don't remember precisely. It could have been a</p> <p>23 little before, a little after.</p> <p>24 And Kim Taylor, who runs the CME</p> <p>25 clearing house.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q Do you remember when you first</p> <p>3 reached out to the CME, Mr. Raisler?</p> <p>4 A Not precisely, but it wouldn't</p> <p>5 surprise me if it had been that Monday, the 15th.</p> <p>6 Q Did you continue your discussions</p> <p>7 with the CME and its representatives throughout</p> <p>8 the week of the 15th, sir?</p> <p>9 A Certainly through Thursday. I don't</p> <p>10 remember any discussions with them on Friday.</p> <p>11 Q At the CME, Mr. Raisler, did you ask</p> <p>12 for information about Lehman's proprietary or</p> <p>13 customer positions?</p> <p>14 A In each case when I made inquiry of</p> <p>15 any exchange or clearing house, I was seeking</p> <p>16 information at the highest level. I wasn't</p> <p>17 looking at what the nature or type of their</p> <p>18 positions was. I was more interested in</p> <p>19 understanding from them whether they saw any</p> <p>20 impediments to moving those positions to Lehman,</p> <p>21 from Lehman to Barclays.</p> <p>22 So I think my answer to your question</p> <p>23 is yes, sort of.</p> <p>24 Q Is it accurate, Mr. Raisler, to say</p> <p>25 that you did not ask for any information at the</p>

Page 26	Page 27
<p>1 Confidential - K. Raisler</p> <p>2 CME about the substance and nature of Lehman's</p> <p>3 customer or proprietary positions at the CME? Is</p> <p>4 that accurate?</p> <p>5 MS. BLOOMER: Objection to form.</p> <p>6 A I would say that is not accurate. I</p> <p>7 would say I asked both custom and nature, but not</p> <p>8 the particulars of the positions. So I was</p> <p>9 interested in knowing which markets, on which</p> <p>10 markets they had positions, and whether there were</p> <p>11 any complications associated with those positions</p> <p>12 that would hinder their movement to Barclays.</p> <p>13 Q But you didn't ask what the size of</p> <p>14 those positions were, for example?</p> <p>15 A I did not. I am not sure absent a</p> <p>16 more complex process they would have been able to</p> <p>17 give me that information, because it was not in</p> <p>18 the first instance Barclays information.</p> <p>19 Q And at this stage that information is</p> <p>20 proprietary to Lehman?</p> <p>21 A Correct.</p> <p>22 Q Did you consider the proprietary</p> <p>23 nature of this information to be a barrier to you</p> <p>24 asking for information about the size of these</p> <p>25 positions and any collateral held to secure them?</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I was not delegated that</p> <p>3 responsibility, so I never really thought in those</p> <p>4 terms.</p> <p>5 Q Was there someone else, to your</p> <p>6 knowledge, Mr. Raisler, who was delegated the task</p> <p>7 to attempt to ascertain whether -- at the CME or</p> <p>8 elsewhere -- what the size and nature was of</p> <p>9 Lehman's customer and proprietary futures</p> <p>10 positions?</p> <p>11 A Generally speaking, again, based on</p> <p>12 these meetings that we had, the operations people</p> <p>13 within Barclays would have been attempting to get</p> <p>14 information of that sort from their counterpart at</p> <p>15 Lehman.</p> <p>16 Q Do you know who the operations people</p> <p>17 within Barclays were who were responsible for this</p> <p>18 attempt to get information?</p> <p>19 A That team would have been led by Liz</p> <p>20 James.</p> <p>21 Q Do you know who else was on that team</p> <p>22 reporting up to Liz James?</p> <p>23 A I am not that good at names and I</p> <p>24 don't recall.</p> <p>25 Q As a general matter, sir, would you</p>
Page 28	Page 29
<p>1 Confidential - K. Raisler</p> <p>2 expect the CME to be able to provide to Lehman a</p> <p>3 list of the Lehman customer and proprietary</p> <p>4 positions and any collateral the CME held in</p> <p>5 respect of those positions?</p> <p>6 MR. LACY: Object to the form of the</p> <p>7 question.</p> <p>8 A It's a somewhat more complicated</p> <p>9 question than I think you intend. To a certain</p> <p>10 extent, the answer to your question should be yes.</p> <p>11 I think some of the information, though, that</p> <p>12 would be transmitted would have to be digested by</p> <p>13 Lehman, because they would be the only ones who</p> <p>14 would know certain pieces of information that the</p> <p>15 CME would not know.</p> <p>16 Q What information would Lehman only</p> <p>17 know but the CME wouldn't know in connection with</p> <p>18 your last answer, sir?</p> <p>19 A The CME carries all of the customer</p> <p>20 positions of Lehman in a single account, and so to</p> <p>21 the extent that Lehman was able to get that -- to</p> <p>22 the extent that the CME was able to get that</p> <p>23 information to Lehman, it would be in an aggregate</p> <p>24 form. It wouldn't be delineated by customer.</p> <p>25 Q I understand.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Is there any other information that</p> <p>3 you were referring to other than the breakdown by</p> <p>4 customer in your answer two answers ago?</p> <p>5 A That would likely be the largest</p> <p>6 impediment to getting a clean piece of</p> <p>7 information.</p> <p>8 Q Would your answer also apply not just</p> <p>9 to the CME, but to any clearing organization, sir?</p> <p>10 MS. BLOOMER: Objection to form.</p> <p>11 A I think that generally the answer</p> <p>12 should be yes. I believe the sophistication of</p> <p>13 some of the other clearing organizations and their</p> <p>14 ability to get that information may be slower, but</p> <p>15 the answer should be yes, at some point in time.</p> <p>16 Q You said you also spoke to ICE</p> <p>17 Futures U.S., Mr. Raisler.</p> <p>18 A Correct.</p> <p>19 Q Can you tell me about your</p> <p>20 conversations with them, please?</p> <p>21 A I don't, I don't want to imply in</p> <p>22 answering this question that I have given you the</p> <p>23 answer to the question with respect to the CME. I</p> <p>24 don't think you asked this question with respect</p> <p>25 to the CME.</p>

Page 30	Page 31
<p>1 Confidential - K. Raisler</p> <p>2 Q I understand that.</p> <p>3 A Okay.</p> <p>4 Q Focusing specifically on the --</p> <p>5 A ICE Futures.</p> <p>6 Q -- ICE Futures U.S., can you tell me</p> <p>7 about your conversation.</p> <p>8 A Again, it was a discussion about</p> <p>9 moving the positions that they were carrying to</p> <p>10 Barclays, but the discussion focused mostly on</p> <p>11 their insecurity about Lehman's continuing ability</p> <p>12 to perform and their worry if there was inadequate</p> <p>13 margin at ICE Futures what would happen.</p> <p>14 Q Were those insecurities or worries</p> <p>15 assuaged in any way, to your knowledge, sir?</p> <p>16 A We were not able to assuage those</p> <p>17 insecurities, no.</p> <p>18 Q Did anything happen as a result of</p> <p>19 this inability to assuage their concerns?</p> <p>20 A We are speaking now with respect to</p> <p>21 ICE Futures?</p> <p>22 Q Yes.</p> <p>23 A They, as with any U.S. clearing</p> <p>24 house, have the right, if they have this</p> <p>25 insecurity, to take over the positions and to</p>	<p>1 Confidential - K. Raisler</p> <p>2 liquidate them or to auction them off.</p> <p>3 Ultimately, that is what ICE Futures did with</p> <p>4 respect to the proprietary positions of Lehman</p> <p>5 that were on their exchange.</p> <p>6 Q Do you have any information, sir,</p> <p>7 about the nature of the propriety positions that</p> <p>8 Lehman had prior to this auctioning off?</p> <p>9 A My recollection is imprecise, but I</p> <p>10 believe that Lehman had some stock index products</p> <p>11 that were trading on ICE Futures, among other</p> <p>12 things.</p> <p>13 Q Do you know when the auction</p> <p>14 happened, sir?</p> <p>15 A I don't precisely recall whether it</p> <p>16 was an auction or whether it was just a</p> <p>17 liquidation. I think it was an auction. I only</p> <p>18 recall it occurred after the CME's auction. I</p> <p>19 don't recall exactly when. Maybe a day later.</p> <p>20 Q To the best of your recollection,</p> <p>21 sir, when was the CME's auction?</p> <p>22 A The CME's auction started the morning</p> <p>23 of the 18th of September.</p> <p>24 Q So you think ICE Futures had an</p> <p>25 auction after the 18th or at least after the</p>
Page 32	Page 33
<p>1 Confidential - K. Raisler</p> <p>2 morning of the 18th, but was it also prior to the</p> <p>3 closing of the transaction on the 22nd, sir?</p> <p>4 A My best recollection is yes. But I</p> <p>5 am not -- I am much more certain about what the</p> <p>6 CME did. The ICE position was not that large</p> <p>7 compared to the CME's.</p> <p>8 Q Do you have a sense, sir, of how</p> <p>9 large the ICE position was?</p> <p>10 A My recollection, in the scheme of</p> <p>11 things at the time, it was a relatively small</p> <p>12 position.</p> <p>13 Q Do you have any information,</p> <p>14 Mr. Raisler, as to the nature and amount of any</p> <p>15 collateral that Lehman held in respect of the ICE</p> <p>16 Futures?</p> <p>17 A I don't. And I wouldn't have known</p> <p>18 that then.</p> <p>19 Q Do you have any information about any</p> <p>20 collateral that ICE rather than Lehman would have</p> <p>21 held in respect to those positions that were</p> <p>22 liquidated?</p> <p>23 MR. LACY: Object to the form of the</p> <p>24 question.</p> <p>25 A I am not sure I understand that</p>	<p>1 Confidential - K. Raisler</p> <p>2 question.</p> <p>3 Q I was simply making sure that I had</p> <p>4 asked about your knowledge with respect to any</p> <p>5 collateral held by Lehman and any collateral</p> <p>6 posted at the exchange, sir. Do you understand</p> <p>7 the distinction I am making?</p> <p>8 A Yes. And I wasn't intending to</p> <p>9 distinguish between the two.</p> <p>10 Q Do you know, Mr. Raisler, whether or</p> <p>11 not Barclays purchased any of the positions that</p> <p>12 were either liquidated or auctioned by ICE?</p> <p>13 A I never heard that one way or the</p> <p>14 other, no.</p> <p>15 Q Did the CME, to your knowledge, sir,</p> <p>16 have similar concerns to ICE about the ability of</p> <p>17 Lehman to continue to perform its obligations as a</p> <p>18 clearing member?</p> <p>19 A Yes.</p> <p>20 Q How is it that you came to learn</p> <p>21 that?</p> <p>22 A This was something that was mentioned</p> <p>23 as early as my first conversation with them. As I</p> <p>24 testified, I think it was on the 15th. It</p> <p>25 culminated in a conversation I had with them</p>

Page 34	Page 35
<p>1 Confidential - K. Raisler</p> <p>2 between 11 p.m. and midnight on the 17th of</p> <p>3 September, in which they asked -- let me begin</p> <p>4 that sentence over again, if I can.</p> <p>5 I received a call, I received several</p> <p>6 calls that evening from representatives of the</p> <p>7 CME, which I was at a dinner and was not able to</p> <p>8 catch up with. When I did get the messages, I</p> <p>9 called them back sometime between 11 p.m. and</p> <p>10 midnight. I got a number of people at the CME at</p> <p>11 that time on the phone.</p> <p>12 They asked me, consistent with the</p> <p>13 discussions we had had leading up to this point,</p> <p>14 whether Barclays was prepared to guarantee</p> <p>15 Lehman's proprietary positions at the exchange.</p> <p>16 I told them I would get back to them</p> <p>17 the following morning, as it was almost midnight.</p> <p>18 They told me that was not satisfactory, that they</p> <p>19 needed an answer within an hour, and that absent a</p> <p>20 guarantee, they would commence an auction first</p> <p>21 thing in the morning.</p> <p>22 Q Were you able to get them an answer</p> <p>23 to their question within an hour, sir?</p> <p>24 A I was able to get them an answer</p> <p>25 within an hour, and I was -- I told them that</p>	<p>1 Confidential - K. Raisler</p> <p>2 Barclays was not in a position to guarantee the</p> <p>3 proprietary positions of Lehman, and that they had</p> <p>4 to do what they had to do.</p> <p>5 Q And did the CME then proceed to</p> <p>6 auction Lehman's proprietary positions at the CME?</p> <p>7 A That is my understanding, yes.</p> <p>8 Q What is the basis of that</p> <p>9 understanding, sir?</p> <p>10 A They told me that.</p> <p>11 Q Who told you in particular?</p> <p>12 A Kim Taylor. Jerry Salzman.</p> <p>13 Phupinder Gill, a name I am not going to be able</p> <p>14 to spell or pronounce, who is the president of the</p> <p>15 exchange, was also on those calls.</p> <p>16 Q Apart from those three individuals,</p> <p>17 sir, do you remember anybody else being on those</p> <p>18 calls?</p> <p>19 A I think there were others. I don't</p> <p>20 remember who they were.</p> <p>21 Q Did you have an understanding, based</p> <p>22 on those calls or otherwise, of the size of</p> <p>23 Lehman's proprietary positions at the CME?</p> <p>24 A I understood them to be huge.</p> <p>25 Q Can you be any more specific, give me</p>
Page 36	Page 37
<p>1 Confidential - K. Raisler</p> <p>2 an order of magnitude other than huge?</p> <p>3 A Well, the exchange had explained to</p> <p>4 us that they thought that the exposure of those</p> <p>5 positions was enormous. Again, I am unable to put</p> <p>6 easy dollars around them. I do indicate in my</p> <p>7 declaration that the auction resulted in a</p> <p>8 movement of approximately \$1.6 billion in margin</p> <p>9 that had been posted at the exchange to the</p> <p>10 auction winners. I think that gives an idea of</p> <p>11 the scale of the positions.</p> <p>12 Q What is the basis for your statement</p> <p>13 in your declaration, which I believe is paragraph</p> <p>14 four, that you understand the auctioning off of</p> <p>15 LBI's proprietary futures positions at the CME led</p> <p>16 to a loss of approximately \$1.6 billion in</p> <p>17 collateral that LBI had posted at the CME?</p> <p>18 A Someone at Barclays had told me that.</p> <p>19 I don't recall precisely who that was or how I got</p> <p>20 that information.</p> <p>21 MS. BLOOMER: And I am going to</p> <p>22 object. You shouldn't really go into that</p> <p>23 discussion in any detail. Sorry about the</p> <p>24 late objection, but --</p> <p>25 A I don't remember the who, what or</p>	<p>1 Confidential - K. Raisler</p> <p>2 where of when I got that information.</p> <p>3 Q And you don't remember, sitting here</p> <p>4 today, whether it was a legal representative of</p> <p>5 Barclays, whether external or internal, or whether</p> <p>6 it was a business person; is that correct?</p> <p>7 A I don't.</p> <p>8 Q And other than this conversation with</p> <p>9 an unnamed and unremembered person at Barclays,</p> <p>10 sir, do you have any basis for the statement that</p> <p>11 you make in the last sentence of your declaration?</p> <p>12 A I have some vague recollection. I</p> <p>13 also read it in a news article at one point, but I</p> <p>14 can't pin that down.</p> <p>15 Q It's not based on a review of</p> <p>16 documents related to the auction, sir?</p> <p>17 A It is not.</p> <p>18 Q It not based on conversations with</p> <p>19 anybody at the CME?</p> <p>20 A It is not.</p> <p>21 Q Did you have any discussions,</p> <p>22 Mr. Raisler, with anybody at the CME about the</p> <p>23 customer positions that Lehman held at the CME?</p> <p>24 A Yes. The dialogue starting on Monday</p> <p>25 with each of the exchanges, clearing houses, would</p>

Page 38	Page 39
<p>1 Confidential - K. Raisler</p> <p>2 have related to both the customer positions and</p> <p>3 the proprietary positions.</p> <p>4 Q Did the CME have similar concerns in</p> <p>5 respect of the customer positions that Lehman held</p> <p>6 as it did to the proprietary futures that you just</p> <p>7 testified about?</p> <p>8 MS. BLOOMER: Object to the form.</p> <p>9 A They had concerns. They were not of</p> <p>10 the same dimension.</p> <p>11 Q What were their concerns, sir?</p> <p>12 A Their concerns there again was that</p> <p>13 Lehman customers -- let me amend that.</p> <p>14 Their concerns were at two levels.</p> <p>15 One is, was Lehman able to administer, continue to</p> <p>16 administer the customer positions in an effective</p> <p>17 way. That is, did it have a handle on what was</p> <p>18 going on. Was it able to manage daily margin pays</p> <p>19 and collects.</p> <p>20 And then secondly, given the</p> <p>21 volatility and uncertainties in the market, were</p> <p>22 Lehman's customers going to be able to perform</p> <p>23 their obligations, because under the law, if they</p> <p>24 were not, Lehman would be backstopping those</p> <p>25 customers, and as we just discussed, the exchange</p>	<p>1 Confidential - K. Raisler</p> <p>2 was not confident of Lehman's ability to do that</p> <p>3 in the context of its proprietary book already, so</p> <p>4 it certainly would be concerned about their</p> <p>5 ability to do that with respect to the customer</p> <p>6 positions.</p> <p>7 Q Turning to the CME's first concern,</p> <p>8 about Lehman's ability to continue to administer</p> <p>9 or manage Lehman's customer positions, was that</p> <p>10 concern at the CME resolved, to your knowledge,</p> <p>11 sir?</p> <p>12 A The answer is no. Each day they had</p> <p>13 that concern, but each day they were apparently</p> <p>14 getting satisfactory results.</p> <p>15 I should point out that this was sort</p> <p>16 of a code red event not just for the CME but also</p> <p>17 for the Commodities Future Trading Commission. We</p> <p>18 haven't discussed them, but they were heavily</p> <p>19 involved as well in these discussions during the</p> <p>20 course of the week.</p> <p>21 Q Was the second concern of the CME the</p> <p>22 ability of Lehman's customers to perform, and if</p> <p>23 they were unable to perform, the ability of Lehman</p> <p>24 to be a backstop as they are required? Did that</p> <p>25 performance obligation -- was that concern</p>
Page 40	Page 41
<p>1 Confidential - K. Raisler</p> <p>2 resolved, to your knowledge, sir?</p> <p>3 A Not until the positions moved from</p> <p>4 Lehman to Barclays the following week.</p> <p>5 Q Do you have an understanding --</p> <p>6 withdrawn.</p> <p>7 The CME didn't do anything to close</p> <p>8 out those futures positions held on behalf of</p> <p>9 customers by Lehman?</p> <p>10 A They did not. They were just</p> <p>11 actively and aggressively monitoring daily and</p> <p>12 intraday what was going on.</p> <p>13 Q Do you have an understanding, sir, of</p> <p>14 how it is that the CME got comfortable such that</p> <p>15 they were willing to continue to clear Lehman's</p> <p>16 customer business?</p> <p>17 MR. LACY: Object to the form of that</p> <p>18 question.</p> <p>19 A I think the word "comfortable" would</p> <p>20 be a significant overstatement, given the amount</p> <p>21 of time and attention they were spending on this.</p> <p>22 Moving customer positions is not an easy process,</p> <p>23 compared to auctioning off proprietary positions.</p> <p>24 They needed to just monitor the positions very</p> <p>25 aggressively and make sure that there were no</p>	<p>1 Confidential - K. Raisler</p> <p>2 defaults. If there had been defaults, they would</p> <p>3 then have gone through a much more complicated</p> <p>4 process as to what to do next.</p> <p>5 So the answer is, in the few days</p> <p>6 they obviously were able to get through.</p> <p>7 Q To your knowledge, sir, did the CME</p> <p>8 hold collateral in respect of Lehman's customer</p> <p>9 futures positions?</p> <p>10 A Absolutely.</p> <p>11 Q Can you tell me what it is you know</p> <p>12 about the nature and extent of the collateral that</p> <p>13 the CME held in respect of those positions?</p> <p>14 A Well, to simplify, the positions that</p> <p>15 Lehman's customers had would have had initial</p> <p>16 margin associated with them, and that initial</p> <p>17 margin would have been posted with the CME</p> <p>18 clearing house. Typically, the clearing broker,</p> <p>19 in this case Lehman, would have additional funds</p> <p>20 posted with the clearing house as a buffer.</p> <p>21 And each day there would be mark to</p> <p>22 market variation margin that would be paid and</p> <p>23 collected on behalf of those customers as a group</p> <p>24 through the clearing house.</p> <p>25 Q Do you know whether in fact Lehman</p>

Page 42	Page 43
<p>1 Confidential - K. Raisler</p> <p>2 had posted additional funds as a buffer at the CME</p> <p>3 for its futures business for its customers?</p> <p>4 A I certainly came to know that. At</p> <p>5 what point in time I did know that -- I think I</p> <p>6 knew that early in the week.</p> <p>7 Q When you came to learn about the</p> <p>8 buffer, sir, did you come to learn about the size</p> <p>9 of the buffer?</p> <p>10 A I don't think I ever really knew sort</p> <p>11 of the scale of the positions, customer,</p> <p>12 proprietary, and the scale of the monies involved.</p> <p>13 Q Can you tell me, please, about your</p> <p>14 conversations with the Chicago Climate Futures</p> <p>15 Exchange.</p> <p>16 A My best recollection is that the only</p> <p>17 positions that were on that exchange were</p> <p>18 proprietary. There were no customer positions.</p> <p>19 But here again, I think the positions were very</p> <p>20 small.</p> <p>21 I believe the conversations were</p> <p>22 similar in that there were questions about</p> <p>23 insecurity and Lehman not being able to perform.</p> <p>24 Q Did the Chicago Climate Futures</p> <p>25 Exchange close out Lehman positions prior to the</p>	<p>1 Confidential - K. Raisler</p> <p>2 closing of the transaction, to your knowledge,</p> <p>3 Mr. Raisler?</p> <p>4 A I am not sure in terms of my memory.</p> <p>5 but it would be unlikely that they would have</p> <p>6 closed it out. It would have been more likely</p> <p>7 that they would have auctioned it. It would have</p> <p>8 been difficult to close it out.</p> <p>9 Q Do you know whether or not the</p> <p>10 Chicago Climate Futures Exchange auctioned any</p> <p>11 Lehman positions?</p> <p>12 A I don't have a real good</p> <p>13 recollection of that. Again, this was a</p> <p>14 relatively small matter, so it got blurred with</p> <p>15 the other activities.</p> <p>16 Q Do you remember who you spoke to at</p> <p>17 the Chicago Climate Futures Exchange?</p> <p>18 A Probably would have been their inside</p> <p>19 counsel, a woman by the name of Ann Cresce.</p> <p>20 C-R-E-S-C-E.</p> <p>21 Q I think you said you also spoke to</p> <p>22 someone at the Kansas City Board of Trade; is that</p> <p>23 correct?</p> <p>24 A Right. I don't remember the name of</p> <p>25 the person there.</p>
Page 44	Page 45
<p>1 Confidential - K. Raisler</p> <p>2 Q What do you recall about the</p> <p>3 substance of your conversations with that person,</p> <p>4 whoever that may be, who was the representative of</p> <p>5 the Kansas City Board of Trade?</p> <p>6 A In Kansas City, unlike the other U.S.</p> <p>7 exchanges we have discussed, Lehman was not a</p> <p>8 clearing member. It cleared through a broker.</p> <p>9 Who it was itself a member. So I would believe</p> <p>10 that the conversation was a somewhat higher level</p> <p>11 one, just to make sure that they knew what we were</p> <p>12 doing, and what was involved in the next steps.</p> <p>13 Q Do you recall whether the Kansas City</p> <p>14 Board of Trade had similar concerns to those of</p> <p>15 the CME?</p> <p>16 A Their concern -- first of all, their</p> <p>17 position was significantly smaller, probably the</p> <p>18 smallest of the lot. Also, they had the comfort</p> <p>19 that their clearing member provided them with,</p> <p>20 with backstop, if Lehman's customers did not</p> <p>21 perform, or if Lehman's proprietary positions</p> <p>22 didn't perform.</p> <p>23 Q You also had conversations, albeit</p> <p>24 perhaps not initially, with the CBOE?</p> <p>25 A Correct. And just to be clear on</p>	<p>1 Confidential - K. Raisler</p> <p>2 that, also the OCC, the Options Clearing Corp.,</p> <p>3 which clears for the CBOE.</p> <p>4 Q Okay. Focusing first on your</p> <p>5 conversations with the CBOE, Mr. Raisler, can you</p> <p>6 tell me what you recall about your conversations</p> <p>7 with the CBOE in the week of the 15th of</p> <p>8 September?</p> <p>9 A I don't think I had any conversations</p> <p>10 with them that week.</p> <p>11 Q Do you know whether anybody else at</p> <p>12 Sullivan & Cromwell had conversations with the</p> <p>13 CBOE that week?</p> <p>14 A It is possible that my partner, David</p> <p>15 Gilberg, could have had conversations with them</p> <p>16 that week, because he and I were splitting up some</p> <p>17 of these responsibilities to reach out to</p> <p>18 exchanges.</p> <p>19 Q Can you describe for me your role</p> <p>20 with respect to the futures due diligence, as you</p> <p>21 have described it, and Mr. Gilberg's role?</p> <p>22 A There was really not any separation</p> <p>23 between us. We worked together, and we just might</p> <p>24 have split up some of the responsibilities to</p> <p>25 reach out. But it was a team.</p>

Page 46	Page 47
<p>1 Confidential - K. Raisler</p> <p>2 Q Generally were you working separately</p> <p>3 in the sense that you would call and try and get</p> <p>4 information from a set list of exchanges or</p> <p>5 clearing organizations, and Mr. Gilberg would be</p> <p>6 tasked with getting that information from a</p> <p>7 different set of organizations?</p> <p>8 A Possible. I think it was more that</p> <p>9 we might -- one of us might do follow-up on the</p> <p>10 other -- it wasn't as discrete as you have</p> <p>11 described it.</p> <p>12 Q In the conversation, for example,</p> <p>13 with the CME that you have testified to today, was</p> <p>14 Mr. Gilberg also on those conference calls?</p> <p>15 A I don't recall he was on any of those</p> <p>16 calls. He could have been.</p> <p>17 Q And you don't believe Mr. Gilberg was</p> <p>18 in the initial meeting on the 15th, sir; is that</p> <p>19 correct?</p> <p>20 A My best recollection is no, although</p> <p>21 I am sure he was in some of the subsequent</p> <p>22 meetings.</p> <p>23 Q Why was it you came to have a</p> <p>24 conversation with the OCC in the week of the 15th,</p> <p>25 Mr. Raisler?</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I am not sure -- first of all, I am</p> <p>3 not sure I have testified to that.</p> <p>4 Q Let me lay a foundation. Perhaps I</p> <p>5 misunderstood your earlier testimony. I didn't</p> <p>6 mean to mischaracterize it.</p> <p>7 Do you believe you had a conversation</p> <p>8 with any representative of the OCC in the week</p> <p>9 between the 15th of September and the closing of</p> <p>10 the transaction on the 22nd?</p> <p>11 MS. BLOOMER: Neil, whenever you are</p> <p>12 ready for a break, we probably should take</p> <p>13 one soon.</p> <p>14 A I am not sure. I know I had</p> <p>15 conversations with them the week of the 22nd. I</p> <p>16 don't recall conversations with them that week,</p> <p>17 although I could have had some.</p> <p>18 Just to elaborate on one point is</p> <p>19 that OCC also clears some futures contracts in</p> <p>20 addition to clearing options. And so they would</p> <p>21 have been a part of my remit to the extent that</p> <p>22 there were futures positions of Lehman proprietary</p> <p>23 or Lehman customers that cleared OCC, separate and</p> <p>24 apart from OCC's clearing of the equity options.</p> <p>25 Q Which types of futures contracts does</p>
Page 48	Page 49
<p>1 Confidential - K. Raisler</p> <p>2 the OCC clear?</p> <p>3 A They clear for the CBOE Futures</p> <p>4 Exchange, CFE. And in particular, the largest</p> <p>5 contract there is called the VIX contract, V-I-X,</p> <p>6 which is a volatility-based contract.</p> <p>7 MR. OXFORD: Okay. Does everybody</p> <p>8 want to take a five-minute break?</p> <p>9 MS. BLOOMER: This might be a good</p> <p>10 time.</p> <p>11 THE WITNESS: Sure.</p> <p>12 (Recess taken.)</p> <p>13 BY MR. OXFORD:</p> <p>14 Q Mr. Raisler, did you have any</p> <p>15 understanding one way or the other whether</p> <p>16 Barclays was one of the bidders for the Lehman</p> <p>17 proprietary positions at the CME that were</p> <p>18 auctioned off, I think you said the 18th of</p> <p>19 September, 2008?</p> <p>20 A I did not know that at the time. I</p> <p>21 heard that afterwards.</p> <p>22 MS. BLOOMER: I would just remind the</p> <p>23 witness not to disclose the substance of</p> <p>24 communications --</p> <p>25 THE WITNESS: Right.</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I was not involved in any of that</p> <p>3 process. To the extent that Barclays was</p> <p>4 involved, I just heard about it afterwards.</p> <p>5 Q Do you know whether anyone from</p> <p>6 Sullivan & Cromwell was involved in that process?</p> <p>7 A I am virtually certain we were not.</p> <p>8 Q Other than the discussions you have</p> <p>9 already testified to this morning, Mr. Raisler, do</p> <p>10 you recall having any other discussion with the</p> <p>11 Chicago Mercantile Exchange during the week of the</p> <p>12 15th of September?</p> <p>13 A You know, I testified earlier that I</p> <p>14 didn't recall conversations with them on that</p> <p>15 Friday. But as I -- as I reflect on it, I think I</p> <p>16 did have a conversation with them on Friday. In</p> <p>17 particular, they had asked whether Barclays was</p> <p>18 prepared to guarantee the customer positions of</p> <p>19 Lehman over the weekend, 20th and 21st. I don't</p> <p>20 recall whether -- what exactly they said, if we</p> <p>21 weren't prepared to guarantee them, what they</p> <p>22 would do, but the clear implication was that they</p> <p>23 needed that guarantee; otherwise, they could</p> <p>24 potentially take action.</p> <p>25 And we did -- I did consult with</p>

Page 50	Page 51
<p>1 Confidential - K. Raisler</p> <p>2 Barclays and we did -- I did communicate to the</p> <p>3 CME sometime on Friday afternoon, the 19th, that</p> <p>4 Barclays was prepared to guarantee the customer</p> <p>5 positions of Lehman over the weekend.</p> <p>6 Q What do you mean by over the weekend,</p> <p>7 Mr. Raisler? Were these positions being traded</p> <p>8 over the weekend?</p> <p>9 A The positions do trade 24 hours a</p> <p>10 day. And obviously given the volatility in the</p> <p>11 markets, there could be substantial movements over</p> <p>12 a weekend, where there is generally less liquidity</p> <p>13 but still active mark to market trading.</p> <p>14 Q Did the CME also request of Barclays</p> <p>15 that Barclays guarantee the trading on the 22nd of</p> <p>16 September?</p> <p>17 A I think at the time that the</p> <p>18 conversation on Friday was for the weekend, which</p> <p>19 I would have assumed for the opening on Monday,</p> <p>20 but the transaction was expected to be</p> <p>21 accomplished so that by the opening on Monday the</p> <p>22 positions would be the responsibility of Barclays.</p> <p>23 Q Were you involved, Mr. Raisler, in</p> <p>24 creating any documents that relate to Barclays'</p> <p>25 agreement to guarantee Lehman's customer positions</p>	<p>1 Confidential - K. Raisler</p> <p>2 over the weekend of the 21st and I guess the 20th</p> <p>3 of September?</p> <p>4 A Curious, I don't recall preparing any</p> <p>5 documents. I -- it could have been, I just don't</p> <p>6 recall.</p> <p>7 Q To your knowledge, sir, was Barclay's</p> <p>8 asked to guarantee any other of Lehman's customer</p> <p>9 positions at any time between the 15th of</p> <p>10 September and the closing of the transaction on</p> <p>11 the 22nd?</p> <p>12 THE WITNESS: I'm sorry, could I have</p> <p>13 that read back, please.</p> <p>14 (Record read.)</p> <p>15 A OCC made a similar demand -- I think</p> <p>16 before the break I was not certain about</p> <p>17 conversations with OCC that week, but I did have</p> <p>18 conversations with OCC that Thursday and Friday,</p> <p>19 in which they were insecure. Friday is actually</p> <p>20 an expiration date for options, and they wanted to</p> <p>21 make sure that the positions would be secured by</p> <p>22 Barclays, again over the weekend, during the</p> <p>23 settlement period. And here specifically customer</p> <p>24 positions.</p> <p>25 Q With whom at the OCC or on whose</p>
Page 52	Page 53
<p>1 Confidential - K. Raisler</p> <p>2 behalf -- withdrawn.</p> <p>3 Did you talk to someone within the</p> <p>4 OCC, or was it their outside counsel?</p> <p>5 A Both. I would have spoken to Bill</p> <p>6 Navin, who is the inside general counsel, and Jim</p> <p>7 McDaniel at Sidley, who is their outside counsel.</p> <p>8 Q And as best you recall, sir, these</p> <p>9 conversations took place on Thursday, the 18th of</p> <p>10 September, and Friday, the 19th of September?</p> <p>11 A Correct.</p> <p>12 Q Was the demand made by the OCC for a</p> <p>13 guarantee of customer positions at the OCC or firm</p> <p>14 positions at the OCC or both?</p> <p>15 A My recollection, it was both.</p> <p>16 Q And did the demand, sir, to your</p> <p>17 knowledge, relate only to the futures that were</p> <p>18 cleared through the OCC or was it all positions</p> <p>19 including equity options that were cleared through</p> <p>20 the OCC?</p> <p>21 A It's interesting, because as of</p> <p>22 Thursday and Friday, we were not aware that there</p> <p>23 were any futures positions, so it would have been</p> <p>24 at least in our thinking exclusively with respect</p> <p>25 to the options positions.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q When you say "we," sir, were not</p> <p>3 aware of the futures positions, are you talking</p> <p>4 about Sullivan & Cromwell or Barclays or anybody</p> <p>5 representing Barclays?</p> <p>6 A Sullivan & Cromwell and Barclays were</p> <p>7 not aware of any futures positions until I believe</p> <p>8 Saturday, the 20th.</p> <p>9 Q How is it, sir, that you came to</p> <p>10 learn about the futures positions at the OCC on</p> <p>11 Saturday, the 20th of September?</p> <p>12 A I am waiting for her privilege</p> <p>13 admonition.</p> <p>14 MS. BLOOMER: Whether I object or</p> <p>15 not, a standing objection for sure.</p> <p>16 Q And presumably a standing admonition</p> <p>17 as well.</p> <p>18 A Conversations with Barclays.</p> <p>19 Q Since you were dealing with the</p> <p>20 futures side of the transaction, sir, and you just</p> <p>21 told me that Barclays and certainly you didn't</p> <p>22 know about the futures positions at the OCC until</p> <p>23 the weekend, can you tell me how it is you came to</p> <p>24 have a conversation with Mr. Navin and</p> <p>25 Mr. McDaniel a day or two prior to that about</p>

Page 54	Page 55
<p>1 Confidential - K. Raisler</p> <p>2 their request that Barclays guarantee positions of</p> <p>3 Lehman at the OCC?</p> <p>4 A It's a good question, actually. It's</p> <p>5 not really clear to me. I think everybody was</p> <p>6 sort of scrambling around. I knew the people at</p> <p>7 the OCC very well. And I am -- I am assuming at</p> <p>8 some point somebody asked me to reach out to them,</p> <p>9 and that's why I did. I don't recall specifically</p> <p>10 sort of how that came to pass.</p> <p>11 Q Can you tell me, Mr. Raisler, as best</p> <p>12 you can recall, everything about the conversations</p> <p>13 you had with Mr. Navin and Mr. McDaniel about the</p> <p>14 OCC's demand for this guarantee of Lehman's</p> <p>15 positions, both customer and proprietary, at the</p> <p>16 OCC?</p> <p>17 MS. BLOOMER: Objection to form.</p> <p>18 A My best recollection was that Friday</p> <p>19 was an expiration date for options, that there was</p> <p>20 very substantial volatility in the market,</p> <p>21 particularly around equity and equity options</p> <p>22 trading. And it could even have been that OCC</p> <p>23 reached out to me. But that they were very</p> <p>24 concerned that they were not getting good</p> <p>25 information about the status of Lehman, and they</p>	<p>1 Confidential - K. Raisler</p> <p>2 wanted comfort that they would not have to take</p> <p>3 action themselves to either auction or liquidate</p> <p>4 positions.</p> <p>5 And so particularly rolling into</p> <p>6 Friday, they wanted to make sure that there would</p> <p>7 be performance on the options that expired, and</p> <p>8 that there wouldn't be any shortfall come Monday.</p> <p>9 Q As I understood your earlier</p> <p>10 testimony, Mr. Raisler, OCC asked Barclays whether</p> <p>11 or not they would guarantee Lehman's trading. Did</p> <p>12 I understand your testimony correctly?</p> <p>13 A Right. I think the word "trading" is</p> <p>14 a little inaccurate at the end there. It would be</p> <p>15 basically whether Barclays would be prepared to</p> <p>16 guarantee Lehman's obligations to the exchange and</p> <p>17 its clearing house in the event there were any</p> <p>18 shortfalls, and it would involve both customer and</p> <p>19 proprietary.</p> <p>20 Q When was the OCC seeking to have that</p> <p>21 guarantee in place with effect from?</p> <p>22 A I believe sometime on Friday. I</p> <p>23 believe the discussions preceded that, but I</p> <p>24 believe sometime on Friday was what they were</p> <p>25 looking for.</p>
Page 56	Page 57
<p>1 Confidential - K. Raisler</p> <p>2 Q Did you take that request back to</p> <p>3 Barclays, sir?</p> <p>4 A I am sure I did.</p> <p>5 Q Do you remember whether or not you</p> <p>6 communicated a response from Barclays back to the</p> <p>7 OCC?</p> <p>8 A My best recollection is that I did,</p> <p>9 and that I assured them that that would be</p> <p>10 something that would be undertaken.</p> <p>11 Q Being as precise as possible, right,</p> <p>12 in asking you, given all this happened about 18</p> <p>13 months ago, can you tell me what it is that you</p> <p>14 assured the OCC Barclays would do in respect of</p> <p>15 their request to guarantee Lehman's obligations to</p> <p>16 the OCC and the clearing house?</p> <p>17 A Again, my best recollection is this</p> <p>18 time it was effectively memorialized in an</p> <p>19 agreement. I, myself, did not have direct</p> <p>20 responsibility for the drafting of that agreement,</p> <p>21 but the agreement reflected the terms of the</p> <p>22 guarantee too.</p> <p>23 Q And that was a guarantee with effect</p> <p>24 from the close of the transaction, sir, not prior</p> <p>25 to the transaction?</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I believe the request that was made</p> <p>3 at the end of the week of the 15th was for the</p> <p>4 opening of the 22nd, something quite similar to</p> <p>5 what we talked about with the CME.</p> <p>6 Q Right. As I understood your earlier</p> <p>7 testimony, Mr. Raisler, you said that the CME</p> <p>8 asked for a guarantee of trading over the</p> <p>9 weekend --</p> <p>10 A Right.</p> <p>11 Q -- of the 20th and 21st; right?</p> <p>12 MS. BLOOMER: Objection,</p> <p>13 mischaracterizes his testimony.</p> <p>14 A The -- what the CME was asking for</p> <p>15 was, when they issued margin calls for the opening</p> <p>16 on Monday, that if there were any shortfall, that</p> <p>17 Barclays would be responsible for it.</p> <p>18 I guess theoretically there could be</p> <p>19 a margin call over the weekend, but since you</p> <p>20 can't wire any money over the weekend, that would</p> <p>21 be quite unusual. So I think it was much more for</p> <p>22 the opening on Monday.</p> <p>23 And I heard the OCC to be sort of</p> <p>24 asking for the same thing.</p> <p>25 Q Is the agreement that you referenced</p>

Page 58	Page 59
<p>1 Confidential - K. Raisler</p> <p>2 that memorialized the understanding between the</p> <p>3 OCC and Barclays something that is known as a</p> <p>4 transfer and assumption agreement?</p> <p>5 A That is correct.</p> <p>6 Q You are familiar with that term?</p> <p>7 A I am, yes.</p> <p>8 Q Have you seen the document that</p> <p>9 memorializes the agreement between Barclays and</p> <p>10 the OCC?</p> <p>11 A I have.</p> <p>12 Q Were you involved in negotiating</p> <p>13 that, sir?</p> <p>14 A I was not. I was not specifically</p> <p>15 involved in the drafting of it. I did communicate</p> <p>16 to the various people the issues we discussed.</p> <p>17 Q Do you know who was negotiating the</p> <p>18 TA? My question is not specifically Barclays.</p> <p>19 A Right.</p> <p>20 Q But if you know who was negotiating</p> <p>21 on behalf of the OCC, Barclays or Lehman.</p> <p>22 A Well, certainly the same people on</p> <p>23 behalf of the OCC. I believe that Navin actually</p> <p>24 signed it.</p> <p>25 On behalf of Barclays, I believe it</p>	<p>1 Confidential - K. Raisler</p> <p>2 was handled more by Cleary, but I don't have a</p> <p>3 specific recollection of the details of that.</p> <p>4 And for Lehman, I am not really sure.</p> <p>5 Q You testified before the break,</p> <p>6 Mr. Raisler, that you understand that a business</p> <p>7 decision by Barclays to purchase the futures</p> <p>8 business was made around the 16th or 17th of</p> <p>9 September, 2008; is that correct?</p> <p>10 A Yes, that is my understanding.</p> <p>11 Q Do you know, sir, what information</p> <p>12 Barclays had about the nature and extent of</p> <p>13 customer positions and any associated collateral</p> <p>14 at the time it made that business decision?</p> <p>15 MS. BLOOMER: I am going to object</p> <p>16 and make sure the witness is clear he's not</p> <p>17 to disclose the substance of communications</p> <p>18 with Barclays.</p> <p>19 A I do know that the information was</p> <p>20 very imprecise. I also know that the positions</p> <p>21 were very large.</p> <p>22 Q Beyond that answer, are you able to</p> <p>23 provide any additional information in response to</p> <p>24 my question?</p> <p>25 MS. BLOOMER: Objection to form.</p>
Page 60	Page 61
<p>1 Confidential - K. Raisler</p> <p>2 A Well, I mean I have already testified</p> <p>3 that we knew to a large extent some of the</p> <p>4 exchanges on which the trading occurred, and on</p> <p>5 those exchanges proprietary versus customer, so,</p> <p>6 you know, we had more information, I could</p> <p>7 elaborate by the testimony I have given to this</p> <p>8 point.</p> <p>9 Q Other than the positions --</p> <p>10 withdrawn.</p> <p>11 Other than the exchanges on which</p> <p>12 these positions were held, do you have any</p> <p>13 information that -- about the information Barclays</p> <p>14 had at the time the business decision was made to</p> <p>15 purchase the futures business from Lehman as to</p> <p>16 the nature and extent of the customer positions</p> <p>17 and any associated collateral?</p> <p>18 MS. BLOOMER: Objection to form.</p> <p>19 And, Neil, I assume you are not expecting</p> <p>20 him to repeat everything he's already told</p> <p>21 you this morning.</p> <p>22 MR. OXFORD: No.</p> <p>23 MS. BLOOMER: Okay.</p> <p>24 A The question is a little hard to</p> <p>25 follow, so, I am going to ask you, if you could,</p>	<p>1 Confidential - K. Raisler</p> <p>2 to maybe break it down for me a little bit.</p> <p>3 Q Yes.</p> <p>4 A Okay.</p> <p>5 Q Leaving aside the identity of the</p> <p>6 exchanges on which positions were held, at the</p> <p>7 time Barclays made the business decision to</p> <p>8 acquire the futures business of Lehman, do you</p> <p>9 know what information Barclays had about the size</p> <p>10 of the customer positions and the size of the</p> <p>11 collateral that is associated with those</p> <p>12 positions?</p> <p>13 A I think at the highest level that</p> <p>14 information was known. Also, to the extent that</p> <p>15 at that time we were not aware from Lehman of any</p> <p>16 defaults on any of the exchanges on which they</p> <p>17 were trading, one could conclude that whatever the</p> <p>18 margin and collateral was, was adequate at that</p> <p>19 moment in time to meet the exchanges' demands.</p> <p>20 Q When you say, Mr. Raisler, at the</p> <p>21 highest level that information was known, are you</p> <p>22 able to be more precise about the -- the nature</p> <p>23 and extent of the customer positions, the size of</p> <p>24 those positions and the collateral associated with</p> <p>25 those positions?</p>

Page 62	Page 63
<p>1 Confidential - K. Raisler</p> <p>2 MS. BLOOMER: Objection to form.</p> <p>3 A I think there were some general</p> <p>4 discussions about the types of customers that</p> <p>5 Lehman had. I think there was some general</p> <p>6 discussions about the size of the positions,</p> <p>7 although I never saw any breakdowns of that.</p> <p>8 I think there were some general</p> <p>9 discussions about the amount, global amount of</p> <p>10 collateral, but I couldn't tell you how much of</p> <p>11 that was where at various points in time.</p> <p>12 Q Same question with respect to the</p> <p>13 proprietary positions. At the time Barclays made</p> <p>14 the business decision to acquire Lehman's futures</p> <p>15 business, do you know what information Barclays</p> <p>16 had about the size of those proprietary positions</p> <p>17 and the associated collateral?</p> <p>18 A My sense is that information was less</p> <p>19 precise than the customer positions, but also</p> <p>20 similarly high level.</p> <p>21 Q Do you believe, Mr. Raisler, that</p> <p>22 Barclays was able to make a similar conclusion as</p> <p>23 to the one that you believe was possible in</p> <p>24 relation to the customer business, that there was</p> <p>25 sufficient collateral to secure those positions?</p>	<p>1 Confidential - K. Raisler</p> <p>2 MS. BLOOMER: Objection to form.</p> <p>3 A Yes, to be clear, I don't think I</p> <p>4 said that there was sufficient collateral to</p> <p>5 secure the positions. All I said was that at a</p> <p>6 point in time, which would be each day when the</p> <p>7 exchange marks the positions, that there had not</p> <p>8 been any defaults. The adequacy of the collateral</p> <p>9 to deal with what transpires or is going to</p> <p>10 transpire the next day would be unknown.</p> <p>11 So all I would comment on is that in</p> <p>12 a retrospective way, open of business on the 16th,</p> <p>13 open of business on the 17th, there was from the</p> <p>14 exchange's position sufficient collateral to avoid</p> <p>15 a default, and I believe that would be true for</p> <p>16 the proprietary positions as well, to the extent</p> <p>17 we had a handle on it.</p> <p>18 Q You described I think very well how</p> <p>19 one meeting that week rolled into another meeting</p> <p>20 which rolled into another meeting, sir. Do you</p> <p>21 have any specific recollections of meetings that</p> <p>22 you had participated in on the 16th of September,</p> <p>23 or conference calls that you had on that date?</p> <p>24 A I think that after the meeting on the</p> <p>25 16th, I think most of my work that week is</p>
Page 64	Page 65
<p>1 Confidential - K. Raisler</p> <p>2 blurred, as I was seeking information and</p> <p>3 reporting back information about contacts with</p> <p>4 exchanges and contacts with the regulators.</p> <p>5 Q Do you recall sitting in any other</p> <p>6 meetings in conference rooms with Lehman</p> <p>7 individuals?</p> <p>8 A My recollection is that those kinds</p> <p>9 of meetings were sort of going on throughout the</p> <p>10 week, and that I would be in those meeting and out</p> <p>11 of those meetings during the course of the week.</p> <p>12 Q Other than the individuals you</p> <p>13 identified towards the beginning of the deposition</p> <p>14 who were in the meeting on the 15th, sir, do you</p> <p>15 remember being in meetings about this, this topic,</p> <p>16 Barclays' acquisition of the Lehman's futures</p> <p>17 business, with any other individuals either on the</p> <p>18 Lehman's side or the Barclays side?</p> <p>19 A That remained the lead cast. I know</p> <p>20 that there were a lot of other people in the room</p> <p>21 during the course of the week, but it's blurred</p> <p>22 and I don't remember distinctly other particular</p> <p>23 people.</p> <p>24 Q You understand, Mr. Raisler, that the</p> <p>25 sale hearing in this matter took place in the</p>	<p>1 Confidential - K. Raisler</p> <p>2 bankruptcy court in the bankruptcy court in</p> <p>3 Bowling Green on the 19th of September?</p> <p>4 A I do understand that.</p> <p>5 Q Were you present at that, sir?</p> <p>6 A I was not.</p> <p>7 Q Where were you on the 19th?</p> <p>8 A Most likely in my office, doing most</p> <p>9 of this work by phone.</p> <p>10 It's possible there was another</p> <p>11 meeting up at Lehman or Barclays that day as well.</p> <p>12 Q Is it fair to say, Mr. Raisler, that</p> <p>13 from the time you were first involved on the</p> <p>14 evening of the 14th of September until the</p> <p>15 transaction closed on the 22nd, that you were</p> <p>16 working exclusively or almost exclusively on this</p> <p>17 matter?</p> <p>18 A I would doubt that. I mean, that is,</p> <p>19 not generally, but I would say this would</p> <p>20 certainly have been my most significant engagement</p> <p>21 that week. I am sure not everything else I was</p> <p>22 doing stopped. So it would be substantial but not</p> <p>23 by any means all.</p> <p>24 Q Did you continue to work on this</p> <p>25 matter through the weekend of the 20th and 21st of</p>

Page 66	Page 67
<p>1 Confidential - K. Raisler</p> <p>2 September?</p> <p>3 A I did.</p> <p>4 Q Were you in your office or at</p> <p>5 Lehman's office?</p> <p>6 A I know there were a lot of phone</p> <p>7 calls over the weekend. I don't recall any</p> <p>8 specific meetings.</p> <p>9 Q Did you have any conversations,</p> <p>10 Mr. Raisler, with any regulators of Lehman's</p> <p>11 futures business? And to give you the time frame</p> <p>12 initially, my question is directed towards when</p> <p>13 you were first engaged on the 14th through the</p> <p>14 closing of the transaction on the 22nd.</p> <p>15 A Yes. I mean I would have had</p> <p>16 extensive discussions with the Commodity Futures</p> <p>17 Trading Commission, which we call the CFTC,</p> <p>18 throughout the week.</p> <p>19 I also likely had conversations with</p> <p>20 other regulators, but it would have been more</p> <p>21 sporadic.</p> <p>22 Q Which other regulators, sir?</p> <p>23 A Probably the FSA in the U.K.</p> <p>24 Potentially the Canadian regulators in Toronto.</p> <p>25 I believe there were some</p>	<p>1 Confidential - K. Raisler</p> <p>2 communications as well with the Japanese</p> <p>3 regulators, although that would have been by</p> <p>4 e-mail rather than by phone.</p> <p>5 Q For what purpose, Mr. Raisler, were</p> <p>6 you engaged in discussions with the CFTC?</p> <p>7 A In two broad areas. One was to keep</p> <p>8 them up-to-date on what was transpiring with</p> <p>9 respect to the transaction, as they had their own</p> <p>10 insecurities and their own responsibilities.</p> <p>11 And two was to negotiate a bulk</p> <p>12 transfer order that would allow the positions to</p> <p>13 be moved from Lehman to Barclays in the event of a</p> <p>14 Lehman bankruptcy. And in this regard, I am</p> <p>15 referencing LBI.</p> <p>16 Q Whom at the CFTC did you deal with</p> <p>17 that week, sir?</p> <p>18 A There would have been a number of</p> <p>19 people, but the primary contact would have been an</p> <p>20 individual named Bob Wasserman.</p> <p>21 Q Do you remember the names of the</p> <p>22 other individuals who you would have dealt with</p> <p>23 that week?</p> <p>24 A I would have spoken as well to -- and</p> <p>25 I will let somebody else deal with the spelling of</p>
Page 68	Page 69
<p>1 Confidential - K. Raisler</p> <p>2 this one -- Ananda Radhakrishnan, is the person to</p> <p>3 whom I addressed a letter.</p> <p>4 Q R-A-D-H-A-K-R-I-S-H-N-A-N.</p> <p>5 A That sounds perfect. It certainly</p> <p>6 would have been the way I would have spelled it if</p> <p>7 I was called upon to do so.</p> <p>8 John Lawton also in that division.</p> <p>9 Likely some folks from the general</p> <p>10 counsel's office. Perhaps also somebody from the</p> <p>11 chairman's office.</p> <p>12 Q Can you tell me, Mr. Raisler, what</p> <p>13 the respective roles were of Mr. Wasserman,</p> <p>14 Mr. Radhakrishnan, and Mr. Lawton?</p> <p>15 A They all work in the same division.</p> <p>16 Radhakrishnan is the head of the division of</p> <p>17 clearing and intermediary oversight. Wasserman</p> <p>18 and Lawton work for Radhakrishnan. Wasserman's</p> <p>19 specialty is bankruptcy.</p> <p>20 Q What were the insecurities that the</p> <p>21 CFTC had?</p> <p>22 A They wanted to be sure that there was</p> <p>23 not going to be a default in the performance of</p> <p>24 Lehman, either in its proprietary or in its</p> <p>25 customer accounts, and they also, simply put, had</p>	<p>1 Confidential - K. Raisler</p> <p>2 the same insecurities that the clearing houses</p> <p>3 did.</p> <p>4 Q You also mentioned that the CFTC had</p> <p>5 its own responsibilities, sir. What did you mean</p> <p>6 by that?</p> <p>7 A As an agency responsible for</p> <p>8 supervising the futures markets, they want to make</p> <p>9 sure that the markets continue to operate</p> <p>10 efficiently, and their concerns on -- with respect</p> <p>11 to performance, are from their point of view</p> <p>12 concerns that relate directly to them in addition</p> <p>13 to relating to the exchanges and the clearing</p> <p>14 houses.</p> <p>15 Q Did you have any conversations, sir,</p> <p>16 about what, if anything, the CFTC was doing to</p> <p>17 satisfy itself that there would not be a default</p> <p>18 relating to Lehman's proprietary customer</p> <p>19 accounts?</p> <p>20 A Basically the CFTC would get its</p> <p>21 information from the exchanges, so, they would be</p> <p>22 in constant contact with the exchanges to get</p> <p>23 whatever information they could. The exchanges</p> <p>24 have separate responsibilities, but the CFTC could</p> <p>25 encourage them to take action if they thought it</p>

Page 70	Page 71
<p>1 Confidential - K. Raisler</p> <p>2 was appropriate to do so.</p> <p>3 Q Do you know whether or not,</p> <p>4 Mr. Raisler, the CFTC had anybody on-site at</p> <p>5 Lehman's offices in the week or weeks running up</p> <p>6 to the closing of the transaction?</p> <p>7 A I believe they had some people come</p> <p>8 in at some point that week, but I don't have a</p> <p>9 good recollection of it.</p> <p>10 Q By that week, do you mean the week</p> <p>11 beginning the 15th of September?</p> <p>12 A Correct.</p> <p>13 Q Do you have any understanding of the</p> <p>14 purpose for which the CFTC's employees were</p> <p>15 present on-site at Lehman that week?</p> <p>16 A They would as a routine matter want</p> <p>17 to look at books and records and make sure that</p> <p>18 things were in order and that they could get a</p> <p>19 handle on what was going on. I don't recall them</p> <p>20 doing that, but it certainly would not have been</p> <p>21 illogical for them to have been on-site.</p> <p>22 Q When did you first speak to anyone at</p> <p>23 the CFTC in connection with this matter?</p> <p>24 A Probably Monday the 15th, the latest</p> <p>25 Tuesday the 16th.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q Do you remember whether you reached</p> <p>3 out to them or they reached out to you?</p> <p>4 A I probably most likely would have</p> <p>5 reached out to them, because they wouldn't have</p> <p>6 most likely known to have reached out to me.</p> <p>7 Q Do you remember who was reached out</p> <p>8 to? Was it Mr. Wasserman?</p> <p>9 A It probably would have been Ananda,</p> <p>10 because I wouldn't have assumed who he would have</p> <p>11 assigned responsibilities to.</p> <p>12 Q Can you tell me as best you can what</p> <p>13 you remember about that conversation with Ananda.</p> <p>14 A My best recollection, and it's not</p> <p>15 very precise, would be that I would have called</p> <p>16 him, told him that we had been engaged by Barclays</p> <p>17 to assist in this possible transaction, and that</p> <p>18 my responsibility was to keep them informed to the</p> <p>19 extent I had information, and that if they needed</p> <p>20 anything from Barclays, to contact me, and that</p> <p>21 one of the things we would be looking at if the</p> <p>22 deal went forward was some kind of a blessing from</p> <p>23 the Commission endorsing the transfer, so I would</p> <p>24 be back to him to discuss that.</p> <p>25 Q And do you recall, sir, what the</p>
Page 72	Page 73
<p>1 Confidential - K. Raisler</p> <p>2 response was from the CFTC in -- in response to</p> <p>3 that overture?</p> <p>4 A I am sure it was the usual formal</p> <p>5 appreciation of the contact, and the, the</p> <p>6 indication that we would be sure to have further</p> <p>7 conversations.</p> <p>8 Q What is the next contact you recall</p> <p>9 with the CFTC?</p> <p>10 A Again, there is a blurring here, but</p> <p>11 I probably would have had a dozen or more contacts</p> <p>12 with them during the course of the week.</p> <p>13 Q Were those contacts primarily with</p> <p>14 Mr. Wasserman?</p> <p>15 A Yes, although oftentimes there were</p> <p>16 others on the phone with him.</p> <p>17 Q And what was the purpose,</p> <p>18 Mr. Raisler, of your continuing contact with the</p> <p>19 CFTC that week? Was that to update them on the</p> <p>20 transaction as it progressed, to your</p> <p>21 understanding?</p> <p>22 A Twofold, as I indicated earlier. One</p> <p>23 is to update on the transaction, and to basically</p> <p>24 touch base about that, and the second was to</p> <p>25 discuss with them the bulk transfer order.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q You said you also had conversations</p> <p>3 you believe with the FSA in the U.K.?</p> <p>4 A Correct.</p> <p>5 Q Can you tell me why that was?</p> <p>6 A I think basically the same thing. To</p> <p>7 the extent that Lehman had positions in the U.K.</p> <p>8 that potentially were going to be taken over by</p> <p>9 Barclays, I just wanted to make sure that they</p> <p>10 knew that I was the point person for</p> <p>11 communications.</p> <p>12 I must say, as I am sitting here</p> <p>13 today, I don't remember having detailed or</p> <p>14 extensive conversations with them. It might have</p> <p>15 been just one or two quick calls.</p> <p>16 Q Do you remember who at the FSA you</p> <p>17 spoke to?</p> <p>18 A It might have been Gavin Hill. I am</p> <p>19 not sure.</p> <p>20 Q To your knowledge, sir, did Barclays</p> <p>21 negotiate a bulk transfer order or agreement with</p> <p>22 the FSA as it did with the CFTC?</p> <p>23 A No, we did not. There was no</p> <p>24 requirement for that in the U.K.</p> <p>25 Q Mr. Raisler, do you know what</p>

Page 74	Page 75
<p>1 Confidential - K. Raisler</p> <p>2 happened to Lehman's positions in the U.K.? Were</p> <p>3 they actually transferred to Barclays?</p> <p>4 A I am not sure.</p> <p>5 MR. LACY: Let me object to the form</p> <p>6 of the question.</p> <p>7 A I am not sure. I don't -- as I sit</p> <p>8 here today, I don't know.</p> <p>9 Q The positions that Lehman had in the</p> <p>10 U.K., do you know whether they were cleared</p> <p>11 through a Lehman affiliate?</p> <p>12 A My recollection is they would have</p> <p>13 been cleared through a Lehman affiliate, yes.</p> <p>14 Q Was that affiliate LBIE?</p> <p>15 A That is my best recollection.</p> <p>16 Q Do you have any recollection of any</p> <p>17 contact with a Canadian regulator? I think you</p> <p>18 said you --</p> <p>19 A Right.</p> <p>20 Q -- potentially had contact.</p> <p>21 A Here again, it's somewhat vague. I</p> <p>22 believe I might have. I don't remember who I</p> <p>23 would have reached out to there. That is quite</p> <p>24 vague.</p> <p>25 Q What is the name of the Japanese</p>	<p>1 Confidential - K. Raisler</p> <p>2 regulator that you reached out to by e-mail?</p> <p>3 A It would have been the MOF, Ministry</p> <p>4 of Finance.</p> <p>5 Q And for what purpose were you</p> <p>6 reaching out to the Ministry of Finance?</p> <p>7 A Same purpose. It is possible that</p> <p>8 rather than reaching out to them directly, we</p> <p>9 contacted the CFTC and asked the CFTC to reach out</p> <p>10 to them, because I don't recall any specific</p> <p>11 e-mails. But I certainly, I certainly did not</p> <p>12 speak to them. That I would have remembered.</p> <p>13 Q Turning to your declaration for a</p> <p>14 moment, Mr. Raisler, that is Exhibit 658-A, if you</p> <p>15 turn to the second page, there is a sentence that</p> <p>16 begins, "I recall," in the first line.</p> <p>17 Do you see that?</p> <p>18 A Right.</p> <p>19 Q You write, "I recall that during</p> <p>20 those meetings and telephone conferences, Barclays</p> <p>21 was unable to get detailed information concerning</p> <p>22 LBI's futures business for a number of reasons,</p> <p>23 both technical and practical."</p> <p>24 Do you see that?</p> <p>25 A Yes.</p>
Page 76	Page 77
<p>1 Confidential - K. Raisler</p> <p>2 Q I think we may have covered some of</p> <p>3 this already. I am not trying to retread ground</p> <p>4 we have already gone through, but I want to make</p> <p>5 sure that I have the -- your complete</p> <p>6 recollection.</p> <p>7 What did you mean by the technical</p> <p>8 reasons that you referenced in your declaration?</p> <p>9 A I think that the systems information</p> <p>10 was not readily available, particularly where it</p> <p>11 was trading through affiliates. That we were</p> <p>12 not -- there weren't any -- there were requests</p> <p>13 for it, but there weren't any reports about</p> <p>14 positions that were made available.</p> <p>15 So, I think that was sort of a</p> <p>16 systems breakdown problem.</p> <p>17 Q Do you know, Mr. Raisler, who at</p> <p>18 Barclays asked for this information and who at</p> <p>19 Lehman they asked?</p> <p>20 A I believe these were general</p> <p>21 questions raised at these meeting we were having</p> <p>22 with the group around the table to get position</p> <p>23 reports and the like.</p> <p>24 Q You also reference practical reasons</p> <p>25 that Barclays was unable to get detailed</p>	<p>1 Confidential - K. Raisler</p> <p>2 information about the futures business. What did</p> <p>3 you mean by that?</p> <p>4 A I guess broadly stated, the market</p> <p>5 was in substantial turmoil during that time</p> <p>6 period. Positions were changing relatively</p> <p>7 rapidly. Particularly in the foreign markets,</p> <p>8 there were rumors that positions were being taken</p> <p>9 over, liquidated.</p> <p>10 So, in a practical sense, there was</p> <p>11 just chaos and resource constraints that were</p> <p>12 driving the lack of information flow.</p> <p>13 Q You go on in the next sentence to</p> <p>14 describe the obstacle to information sharing that</p> <p>15 stands out most in your mind as the problems with</p> <p>16 the LBI books and records.</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q You then go on to say in the next</p> <p>20 sentence, "My recollection is that due to these</p> <p>21 and other issues, the discussions during these</p> <p>22 meetings and calls were had at a very high level,</p> <p>23 all relating generally to LBI's proprietary</p> <p>24 positions and collateral, the customer segregated</p> <p>25 and secured accounts through which LBI conducted</p>

Page 78	Page 79
<p>1 Confidential - K. Raisler</p> <p>2 that business, and the customer accounts that</p> <p>3 related to that business."</p> <p>4 Do you see that?</p> <p>5 A Yes, I do.</p> <p>6 Q At the start of that sentence, you</p> <p>7 refer to other issues. What did you mean by that,</p> <p>8 sir?</p> <p>9 A Well, depending on what we mean by</p> <p>10 technical and practical, there were some</p> <p>11 situations where information was just not</p> <p>12 delivered, and an example of that is with this VIX</p> <p>13 position on the CFE that we didn't learn about</p> <p>14 until Saturday, the 20th, even though it had been</p> <p>15 on the books the entire week.</p> <p>16 I mean, I don't believe -- just to be</p> <p>17 clear, I don't believe anybody was withholding</p> <p>18 information from us per se, but information was</p> <p>19 not getting to us, and this was a proprietary</p> <p>20 position and a relatively significant one that was</p> <p>21 just not disclosed.</p> <p>22 Q Were you referring to anything else,</p> <p>23 sir, when you referenced the other issues in your</p> <p>24 declaration?</p> <p>25 MS. BLOOMER: Objection to form.</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I think there were other issues with</p> <p>3 foreign markets of just not -- information just</p> <p>4 not flowing in terms of where they had positions</p> <p>5 and accounts, which may go beyond technical and</p> <p>6 practical.</p> <p>7 Q You reference in that same sentence,</p> <p>8 sir, the customer segregated and secured accounts.</p> <p>9 Can you tell me, please, what those are?</p> <p>10 A Customers that trade in the U.S.</p> <p>11 futures markets have collateral that they post.</p> <p>12 That collateral is held pursuant to CFTC</p> <p>13 regulation in a segregated account, segregated</p> <p>14 from the proprietary assets of the futures</p> <p>15 program.</p> <p>16 If a customer wishes to trade in a</p> <p>17 non-U.S. futures market through a U.S. broker,</p> <p>18 generally, the funds will be held in a secured</p> <p>19 account, which is a separate account from the</p> <p>20 segregated account, but an account that also has</p> <p>21 significant protection from the liabilities of the</p> <p>22 futures broker or its affiliates.</p> <p>23 Q Do I understand from your answer,</p> <p>24 Mr. Raisler, that there is a difference in the</p> <p>25 degree of protection from liabilities of the</p>
Page 80	Page 81
<p>1 Confidential - K. Raisler</p> <p>2 broker for the customer collateral in the</p> <p>3 segregated and the secured accounts?</p> <p>4 A This has never really been tested in</p> <p>5 a court situation, but I think most people would</p> <p>6 agree that both of them are entitled to</p> <p>7 substantial protection, but that segregated</p> <p>8 positions are probably a bit more protected than</p> <p>9 secured positions.</p> <p>10 Q And can you explain a little more</p> <p>11 with respect, firstly, to the segregated and then</p> <p>12 the secured accounts, how that, how that actually</p> <p>13 works? If a customer of Lehman provides</p> <p>14 collateral to Lehman, where is that held?</p> <p>15 A There are really two --</p> <p>16 MS. BLOOMER: Objection, lacks</p> <p>17 foundation.</p> <p>18 A There are two locations for the</p> <p>19 holding of customer funds. One would be at a bank</p> <p>20 account of the futures broker, labeled customer</p> <p>21 segregated account. It would be an aggregate</p> <p>22 account holding the segregated funds of all of the</p> <p>23 customers of that broker. And the bank holding</p> <p>24 those segregated funds would pledge to the broker</p> <p>25 that it was holding the accounts in segregation</p>	<p>1 Confidential - K. Raisler</p> <p>2 pursuant to CFTC rules and could not use any of</p> <p>3 that money to meet any of the obligations of the</p> <p>4 futures broker or its affiliates.</p> <p>5 The second location would be in a</p> <p>6 customer segregated account in the name of Lehman,</p> <p>7 in this case, held at the clearing house.</p> <p>8 Q And would the customer segregated</p> <p>9 account, Mr. Raisler, have the same protection by</p> <p>10 way of a pledge as the bank account would?</p> <p>11 A Yes. And in fact, it wouldn't be</p> <p>12 surprising that the clearing house has a clearing</p> <p>13 bank where it keeps the money, and so the same</p> <p>14 basic representations apply.</p> <p>15 Q I see references to 30.7 accounts.</p> <p>16 A 30.7 refers to the secured, not the</p> <p>17 segregated account regime.</p> <p>18 Q And that is for non-U.S. futures</p> <p>19 markets; correct?</p> <p>20 A Correct.</p> <p>21 Q Is there a similar designation or</p> <p>22 number that refers to the segregated accounts?</p> <p>23 A Generally it's referred to as either</p> <p>24 4d, four small d, which is the statutory</p> <p>25 provision, or 1.20, one point two zero, who is the</p>

Page 82	Page 83
<p>1 Confidential - K. Raisler</p> <p>2 regulatory provision.</p> <p>3 Q Taking Lehman's as our example, would</p> <p>4 Lehman own the assets in the -- either the bank</p> <p>5 account or the customer segregated account held at</p> <p>6 the clearing house?</p> <p>7 MS. BLOOMER: Objection, vague as to</p> <p>8 time frame, and lacks foundation.</p> <p>9 A I think actually absolutely the</p> <p>10 opposite. These would be recognized as assets to</p> <p>11 secure the obligations of the customers, and they</p> <p>12 would not be the assets of Lehman Brothers in your</p> <p>13 example.</p> <p>14 I guess it's necessary to put a small</p> <p>15 caveat on that, which is, as we discussed</p> <p>16 earlier -- I don't want to rehash what we</p> <p>17 discussed earlier, but Lehman and/or a futures</p> <p>18 broker typically would have some of its own assets</p> <p>19 in the segregated account as a buffer to avoid</p> <p>20 concerns at the clearing house that intraday or</p> <p>21 daily margins can't be met.</p> <p>22 Q And are you making a distinction as</p> <p>23 to who owns the buffer assets, as you have</p> <p>24 described them, and the assets that are held to</p> <p>25 secure the obligations of customers?</p>	<p>1 Confidential - K. Raisler</p> <p>2 MS. BLOOMER: Objection to the form</p> <p>3 of that question.</p> <p>4 A Correct. If there were to be a</p> <p>5 default, all of those assets would be deemed to be</p> <p>6 part of the customer estate and would be used by</p> <p>7 the customers before the excess, if there were</p> <p>8 any, were to be returned to the broker.</p> <p>9 However, if there were not to be a</p> <p>10 default, and the business were to be wound down,</p> <p>11 hypothetically, that buffer money could be</p> <p>12 returned to the broker.</p> <p>13 Q I think I got your last answer, and I</p> <p>14 appreciate that. I just want to make sure that we</p> <p>15 are not talking past each other.</p> <p>16 The assets of the broker dealer, that</p> <p>17 the broker dealer puts into such a segregated</p> <p>18 account as a buffer for intraday trading, as you</p> <p>19 describe, would you consider those to be the</p> <p>20 assets of the broker dealer rather than of</p> <p>21 customers?</p> <p>22 MS. BLOOMER: Objection to the form</p> <p>23 of the question.</p> <p>24 A Two comments there. One is, it's not</p> <p>25 just for intraday. It would just generally be to</p>
Page 84	Page 85
<p>1 Confidential - K. Raisler</p> <p>2 complete margin calls as they occur.</p> <p>3 As I indicated, it's a bit of a</p> <p>4 hybrid. If there were to be a default, that money</p> <p>5 would be used by the exchange or the CFTC</p> <p>6 administering that default as an asset for the</p> <p>7 benefit exclusively of the customers, and only if</p> <p>8 there were, if there was some money left over,</p> <p>9 could it be potentially returned, but if there</p> <p>10 were not a default, and if it were just to be sort</p> <p>11 of shut down the business, buffer money might be</p> <p>12 identified as separate monies that would go back</p> <p>13 to -- assuming everything else gets paid out, that</p> <p>14 would go back to the FCM.</p> <p>15 Q I think I understand that. Thank</p> <p>16 you.</p> <p>17 Is it correct then to say that to</p> <p>18 your understanding, sir, the -- someone other than</p> <p>19 the broker dealer, in this case Lehman, has an</p> <p>20 interest in the assets in the segregated account?</p> <p>21 MS. BLOOMER: Objection to form. Did</p> <p>22 you say other than the broker dealer, in</p> <p>23 this case Lehman?</p> <p>24 MR. OXFORD: Yes.</p> <p>25 MS. BLOOMER: Objection to the form</p>	<p>1 Confidential - K. Raisler</p> <p>2 of the question.</p> <p>3 A Just for clarity, since this probably</p> <p>4 comes up a number of times, your reference to the</p> <p>5 broker dealer I don't object to except for the</p> <p>6 fact that it's both a joint broker dealer and a</p> <p>7 futures commission merchant, and it's only in its</p> <p>8 capacity as a broker dealer that this issue comes</p> <p>9 up.</p> <p>10 But I think the answer to your</p> <p>11 question is yes.</p> <p>12 Q And is it a particular exchange or</p> <p>13 clearing organization that has an interest in the</p> <p>14 segregated account?</p> <p>15 A It's the customers as a whole, as a</p> <p>16 group in aggregate form that have an interest in</p> <p>17 that account.</p> <p>18 Q Would, for example, the CME be able</p> <p>19 to draw down from a customer seg account?</p> <p>20 MR. LACY: Perhaps -- I suppose it's</p> <p>21 an objection. But the two of you are -- I</p> <p>22 am not sure you are both using the same</p> <p>23 understanding of the word "interest."</p> <p>24 Perhaps if the question could be more</p> <p>25 detailed about what an interest means.</p>

Page 86

Confidential - K. Raisler

Q By interest, I mean any rights to.

A The clearing house and the exchange have no rights to any assets except -- well, to any assets period.

In administering a default, they would take over positions and use assets in a segregated account to meet market-related demands, but it shouldn't be implied that the clearing house can put money in its pocket.

Q Right. I think I understand, then. Thank you.

So, other than in the event of a default by the FCM, the clearing house has no ability to draw down money for variation margin or initial margin, for example, from a customer seg account; is that correct?

MS. BLOOMER: Objection to form.

A No, that is not correct. I mean I think, we have to go back a little bit to first principles. Basically the segregated account is there to meet the daily requirements of the customers as a whole to the clearing house, and so the clearing house routinely will be drawing down to meet the market-based obligations of the

Page 88

Confidential - K. Raisler

take over the accounts and liquidate them themselves.

Q Is there any requirement that an FCM maintain a buffer or an excess in a segregated account, or is it simply common practice?

A It -- it's common practice. The legal requirement for the FCM is it has to maintain net capital. That net capital is part of its capital structure, not necessarily money that it puts into a segregated account. The net capital requirements are a percentage of the funds in segregation.

Q So would it be accurate to say that an FCM could withdraw any excess in the segregated account at any time?

A I think it could withdraw money that it had put up as its buffer, provided the exchange did not have any insecurity, in which case the exchange would not let them do that.

And I'm sorry, when I refer to exchange there, I may be referring to the clearing house. The two are interchangeable when you are dealing with something like the CME.

Q Would the exchange or clearing house,

Page 87

Confidential - K. Raisler

customers as a whole, and that will happen daily.

Q And does the clearing house have a right to draw down an unlimited amount from the segregated account?

A To the extent that it's needed to meet obligations of the clearing house, yes.

Q You said obligations of the clearing house. Did you mean obligations of customers?

A Obligations of the FCM's customers to the clearing house.

And I think it's also important to recognize that there is a default scenario which we have been speaking to, but there is also the ability of the exchange, if it has insecurity, to take action as well.

Q And what would that action be, sir?

A That action would be similar to the action that they took with respect to the proprietary positions at the CME. They could direct some positions to be moved to another futures broker. They would need the CFTC to assist them to make that happen.

Or they could direct that the trading be for liquidation only, or they could literally

Page 89

Confidential - K. Raisler

Mr. Raisler, have a right to draw down money on a daily or perhaps intraday basis not only from the segregated account that is held at the clearing house, but if there are separate bank accounts that are held by the FCM, which is I think the first example you gave, would the clearing house also have a right to draw down monies from that account?

A Yes.

Q Turning to the world then of secured accounts, which I think you described as non-U.S. futures markets cleared through a U.S. broker.

A Correct.

Q Can you tell me, sir, whether or not the rights of the clearing brokers or exchanges ex-U.S. are any different than the rights of the exchanges or clearing houses in the U.S. under the segregated accounts?

MR. LACY: Can I just stop for a moment and say that you are using someone who is supposed to be a fact witness basically to give you a lecture on commodities regulations.

All of this stuff is available in the

Page 90	Page 91
<p>1 Confidential - K. Raisler</p> <p>2 rules for you to look up yourselves, so I</p> <p>3 hope this will not go on all day, and I</p> <p>4 don't think it's fair to the witness</p> <p>5 basically to make him take the day off of</p> <p>6 work for his other clients to explain this</p> <p>7 all to you.</p> <p>8 Obviously we are happy to go on for a</p> <p>9 while, but this should not be the day's</p> <p>10 work.</p> <p>11 A The -- in structure and concept, the</p> <p>12 answer should be yes. However, each foreign</p> <p>13 clearing house has its own rules, and therefore,</p> <p>14 each one of these secured amount and secured</p> <p>15 account situations would have to be evaluated</p> <p>16 based on the rules of each of the markets.</p> <p>17 Q To your knowledge, Mr. Raisler, did</p> <p>18 Lehman as an FCM calculate the amount of money in</p> <p>19 its customer segregated and secured accounts on a</p> <p>20 daily basis?</p> <p>21 MS. BLOOMER: Objection, lack of</p> <p>22 foundation.</p> <p>23 MR. LACY: Object to the form as</p> <p>24 well.</p> <p>25 Q And my question is specifically</p>	<p>1 Confidential - K. Raisler</p> <p>2 directed towards the time period when you were</p> <p>3 involved, sir, from the 15th onwards.</p> <p>4 A It would be effectively required to</p> <p>5 do so by regulation.</p> <p>6 Q And would the calculation that Lehman</p> <p>7 performed that week show whether or not there was</p> <p>8 any excess in the segregated and secured accounts</p> <p>9 for customers over and above that which was</p> <p>10 required under regulation to be held?</p> <p>11 MS. BLOOMER: Objection to the form.</p> <p>12 It lacks foundation.</p> <p>13 A I think it's important to just stop a</p> <p>14 moment here and talk about the word "excess," and</p> <p>15 particularly talk about it in the context of what</p> <p>16 was going on in the week of September 15th. Given</p> <p>17 the amount of volatility in the market, not just</p> <p>18 for Lehman, but for any futures broker that week,</p> <p>19 you wouldn't -- you would know at a snapshot in</p> <p>20 time, that is when the end of day, which as we</p> <p>21 indicated these markets trade 24 hours, but there</p> <p>22 is an arbitrary end of day calculation done where</p> <p>23 the position is marked to market, I believe</p> <p>24 typically at 3:30 or 4 p.m.</p> <p>25 By the time you have run that</p>
Page 92	Page 93
<p>1 Confidential - K. Raisler</p> <p>2 calculation, which would be sometime thereafter,</p> <p>3 usually several hours, you wouldn't know at that</p> <p>4 point whether you were actually in line and know</p> <p>5 where you stood with respect to excess versus</p> <p>6 required capital to meet obligations.</p> <p>7 So, theoretically I would answer your</p> <p>8 question yes, but practically, particularly in a</p> <p>9 volatile market, the answer is no.</p> <p>10 Q Is it your understanding,</p> <p>11 Mr. Raisler, that Lehman was required to perform</p> <p>12 segregated and secured calculations on a daily</p> <p>13 basis?</p> <p>14 MS. BLOOMER: Objection to the form,</p> <p>15 foundation.</p> <p>16 A That is correct, yes.</p> <p>17 Q And they were required to perform</p> <p>18 those calculations by a particular time each day;</p> <p>19 is that correct?</p> <p>20 A Not really.</p> <p>21 MS. BLOOMER: I am just going to --</p> <p>22 before you answer, I'm going to object, and</p> <p>23 I am just going to -- are you asking for his</p> <p>24 legal opinion on what Lehman was required to</p> <p>25 do?</p>	<p>1 Confidential - K. Raisler</p> <p>2 MR. OXFORD: I'm asking if he knows.</p> <p>3 MS. BLOOMER: You are asking him what</p> <p>4 is required. Do you mean legally required</p> <p>5 under a regulation? Is that what you are</p> <p>6 asking him?</p> <p>7 MR. OXFORD: I'm asking him if he</p> <p>8 knows the answer to the question.</p> <p>9 A To my knowledge, there was no</p> <p>10 specific time of day required.</p> <p>11 Q Do you know whether or not the</p> <p>12 segregated and secured calculations were</p> <p>13 scrutinized during the week of the 15th, sir, by</p> <p>14 the CFTC?</p> <p>15 A I do not know.</p> <p>16 Q Did you ever see any customer</p> <p>17 segregated and secured account calculations as</p> <p>18 part of the investigation or the due diligence,</p> <p>19 however you describe it, as part of your work</p> <p>20 prior to the closing of the transaction on the</p> <p>21 22nd?</p> <p>22 A I did not.</p> <p>23 Q Did you ask to see any segregated,</p> <p>24 customer segregated and secured calculations?</p> <p>25 A I don't recall doing so.</p>

Page 94	Page 95
<p>1 Confidential - K. Raisler</p> <p>2 Q Do you know whether or not anybody at</p> <p>3 Barclays asked for that information?</p> <p>4 MS. BLOOMER: Objection to form and</p> <p>5 foundation.</p> <p>6 A I believe that was one of the topics</p> <p>7 that was discussed in the meetings early in the</p> <p>8 week.</p> <p>9 Q Do you know whether or not that the</p> <p>10 results of the seg and secured calculations were</p> <p>11 provided to Barclays at any time during the week</p> <p>12 of the 15th?</p> <p>13 A I believe some information was</p> <p>14 provided. My recollection is it was at a high</p> <p>15 level.</p> <p>16 Q Can you be more specific about what</p> <p>17 you mean by a high level?</p> <p>18 A I believe that aggregate numbers were</p> <p>19 provided.</p> <p>20 Q And what information would be</p> <p>21 included in those aggregate numbers, again</p> <p>22 specifically with respect to the customer</p> <p>23 segregated and secured accounts of Lehman in the</p> <p>24 week of the 15th?</p> <p>25 A My recollection is some numbers were</p>	<p>1 Confidential - K. Raisler</p> <p>2 thrown out as to what the amount of seg and the</p> <p>3 amount of secured were at various times, but they</p> <p>4 were always going to be out of date by the time we</p> <p>5 received them.</p> <p>6 Q Why would they be out of date, sir?</p> <p>7 A Because whenever they reported them,</p> <p>8 they would be several hours at a minimum after the</p> <p>9 actual mark to market times, and the markets were</p> <p>10 moving rapidly, so they were retrospectively</p> <p>11 reliable, but current time not.</p> <p>12 Q To your understanding, sir, did</p> <p>13 Barclays have information about the seg and</p> <p>14 secured calculations at more than one point over</p> <p>15 the week of the 15th?</p> <p>16 MS. BLOOMER: I am going to object to</p> <p>17 the question as to vagueness of the term</p> <p>18 calculation. Just so you are not talking</p> <p>19 past each other, are you asking him about</p> <p>20 the calculation meaning the requirement or</p> <p>21 the actual balance in the accounts at any</p> <p>22 given point? I think there may be some</p> <p>23 confusion.</p> <p>24 MR. OXFORD: That is a fair</p> <p>25 objection.</p>
Page 96	Page 97
<p>1 Confidential - K. Raisler</p> <p>2 Q My questions, Mr. Raisler, are</p> <p>3 directed to trying to find out what information,</p> <p>4 if any, Barclays had about, on the one hand, the</p> <p>5 required amount that Barclays -- sorry, Lehman was</p> <p>6 obligated to have in the customer segregated and</p> <p>7 secured accounts, and how much Lehman actually had</p> <p>8 locked up compared with that obligation.</p> <p>9 A My recollection, and it is not very</p> <p>10 precise, is that the numbers that were thrown</p> <p>11 around were the total balances, not any breakdown</p> <p>12 about the required versus other amounts.</p> <p>13 Q Do you know whether or not Barclays</p> <p>14 knew at any time prior to the closing of the</p> <p>15 transaction, sir, whether or not Lehman had locked</p> <p>16 up in its customer segregated and secured accounts</p> <p>17 sufficient assets to meet its obligations to those</p> <p>18 customers?</p> <p>19 MR. LACY: I am going to object to</p> <p>20 the form of that question.</p> <p>21 A I think I testified about this</p> <p>22 earlier. All I could say is that up until the</p> <p>23 time of the closing, there had not been a default,</p> <p>24 but that doesn't tell you whether -- you know,</p> <p>25 what would be adequate under the circumstances,</p>	<p>1 Confidential - K. Raisler</p> <p>2 because of the market's rapid changing of</p> <p>3 positions.</p> <p>4 Q My question is not directed towards</p> <p>5 any defaults post closing, Mr. Raisler. My</p> <p>6 question is whether or not Barclays knew whether</p> <p>7 or not Lehman was in compliance with its</p> <p>8 obligations under the CFTC regulations with</p> <p>9 respect to the amount of collateral it had locked</p> <p>10 up in its customer segregated and secured</p> <p>11 accounts.</p> <p>12 MS. BLOOMER: Objection.</p> <p>13 MR. LACY: Object to the form of the</p> <p>14 question.</p> <p>15 A It was my understanding during the</p> <p>16 course of the week of the 15th that there were, in</p> <p>17 total, in the segregated and secured accounts</p> <p>18 monies sufficient to meet the margin calls that</p> <p>19 the exchanges had imposed on those accounts.</p> <p>20 That does not specifically answer</p> <p>21 your question as to whether there was adequate</p> <p>22 collateral in those accounts.</p> <p>23 Q Did you ask anyone at Lehman whether</p> <p>24 or not there was adequate collateral in those</p> <p>25 customer segregated and secured accounts to meet,</p>

Page 98	Page 99
<p>1 Confidential - K. Raisler 2 first of all, the requirement under the CFTC 3 regulations? 4 A See, no one could know that. That is 5 the sort of -- I mean absent -- given the 6 volatility of the market and the uncertainty of 7 the market, that is always going to be an unknown, 8 more dramatically unknown when the markets are 9 moving rapidly. In this context it was made 10 emphatically unknown because we weren't getting 11 complete information about positions. 12 MR. OXFORD: Do we want to take a 13 five-minute break? 14 THE WITNESS: Sure. 15 (Recess taken.) 16 (Exhibit 659-A marked for 17 identification as of this date.) 18 MR. OXFORD: Back on. 19 Q Mr. Raisler, I have handed you what I 20 have marked as Exhibit 659-A. If you could take a 21 moment to review that and let me know when you are 22 done, please. 23 In the meantime, I will just identify 24 that for the record as an e-mail with the Bates 25 number BCISC 00009676, and the document goes</p>	<p>1 Confidential - K. Raisler 2 through 9688. 3 MR. LACY: Can you make out the 4 highlighting? 5 THE WITNESS: Yes. 6 MS. BLOOMER: This highlighting? 7 MR. LACY: Just so we are all on the 8 same page, the first attachment to this is a 9 comparison with highlighted material, and 10 it's extraordinarily difficult to see what 11 is highlighted on the copy. 12 THE WITNESS: I am not even sure that 13 is the case, but -- 14 MR. LACY: Well, the description on 15 the attachments. 16 THE WITNESS: The third one. 17 MR. LACY: Oh, the third? 18 THE WITNESS: Yes. 19 MR. LACY: I'm sorry. Why do we have 20 three attachments? 21 THE WITNESS: One is a Word version, 22 so I am mystified by that, too. 23 MR. LACY: Got it. 24 MS. BLOOMER: Is that supposed to be 25 highlighted or not?</p>
Page 100	Page 101
<p>1 Confidential - K. Raisler 2 MR. LACY: Apparently it's not. That 3 is apparently some sort of copying defect. 4 THE WITNESS: Can we go off the 5 record for a moment? 6 MR. OXFORD: Sure. 7 (Discussion held off the record.) 8 MR. LACY: Exhibit 659-A was a copy 9 apparently of the document that was 10 produced. The witness pointed out that the 11 third attachment is supposed to be a 12 blackline. It's not a blackline of the same 13 document of which the first two attachments 14 are copies and which would suggest that 15 there appears to be a mistake in the 16 production, which I will clear up. 17 MR. OXFORD: Thank you. 18 Q Mr. Raisler, with that on the record, 19 my questions are going to focus primarily on the 20 first attachment to Exhibit 659-A. 21 Do you recognize that document, sir? 22 A Yes, I do. 23 Q Can you tell me what it is, please? 24 A This is the request letter to the 25 CFTC that I previously described as the request</p>	<p>1 Confidential - K. Raisler 2 for a bulk transfer order. 3 Q You will see, turning to the e-mail 4 that sends this to the CFTC, it appears to be sent 5 by your partner, David Gilberg, and on Friday, 6 September 19th, just after 10 a.m. 7 Do you see that? 8 A Yes. 9 Q And sent to Paul Wasserman, John 10 Lawton, and there is another name that I don't 11 think you mentioned before. Is that Natalie 12 Markman? 13 A Yes, it is. 14 Q Did you have any conversations with 15 Ms. Markman about the transfer of futures business 16 to Barclays from Lehman? 17 A Yes, we did. 18 Q Can you tell me what those 19 conversations were, please? 20 A They would be similar to the 21 conversations we had with the other people we have 22 identified. The only specifics is that I believe 23 working on this letter we had conversations back 24 and forth with Natalie on suggested changes or 25 clarifications.</p>

Page 102	Page 103
<p>1 Confidential - K. Raisler</p> <p>2 Q Did you or anyone else at Sullivan &</p> <p>3 Cromwell send drafts of this letter to the CFTC?</p> <p>4 A Yes.</p> <p>5 Q Sitting here today, do you have any</p> <p>6 recollection of how many drafts were sent?</p> <p>7 A I'm sure more than one, but probably</p> <p>8 only a couple.</p> <p>9 Q As best you can recall, sir, when was</p> <p>10 the first draft sent?</p> <p>11 A I believe probably the prior day. I</p> <p>12 believe all of this was negotiated in about a</p> <p>13 24-hour or so time period.</p> <p>14 Q The negotiation of this letter with</p> <p>15 the CFTC, did it take place with the three</p> <p>16 individuals who are the recipients of the e-mail</p> <p>17 that is Exhibit 659-A?</p> <p>18 A Yes.</p> <p>19 Q Were there others at the CFTC who</p> <p>20 were also involved?</p> <p>21 A Ananda Radhakrishnan was also</p> <p>22 involved.</p> <p>23 Q If you could turn to your letter,</p> <p>24 sir, that is the first attachment to the e-mail,</p> <p>25 and you will see if you look on the third page, it</p>	<p>1 Confidential - K. Raisler</p> <p>2 appears to be an executed copy.</p> <p>3 A I believe that is a fourth page, but</p> <p>4 it is signed, yes.</p> <p>5 Q I am sorry, I thought I said fourth</p> <p>6 page. My mistake.</p> <p>7 Is that your signature, sir, or did</p> <p>8 someone sign on your behalf?</p> <p>9 A That is not my signature. That looks</p> <p>10 like David Gilberg's signature.</p> <p>11 Q Signing on your behalf?</p> <p>12 A That's correct.</p> <p>13 Q Did you authorize Mr. Gilberg to sign</p> <p>14 on your behalf?</p> <p>15 A I did.</p> <p>16 Q If you could turn to the second page</p> <p>17 of your letter, please, sir. You will see the</p> <p>18 first full paragraph begins, "Pursuant to the</p> <p>19 agreement."</p> <p>20 A Correct.</p> <p>21 Q Do you have that?</p> <p>22 A Yes.</p> <p>23 Q It reads, "Pursuant to the agreement</p> <p>24 LBI will transfer all customer accounts, including</p> <p>25 100 percent of each customer's net equity, as</p>
Page 104	Page 105
<p>1 Confidential - K. Raisler</p> <p>2 reflected on the books of LBI, to the LLC. "</p> <p>3 Do you see that?</p> <p>4 A Yes.</p> <p>5 Q That letter contemplates a transfer</p> <p>6 of the futures business into a newly formed</p> <p>7 Delaware limited liability company; is that</p> <p>8 correct?</p> <p>9 A Among other things, yes.</p> <p>10 Q Did the transfer to the LLC ever</p> <p>11 happen?</p> <p>12 A To my knowledge, no.</p> <p>13 Q Were you aware, sir, whether or not</p> <p>14 Barclays -- withdrawn.</p> <p>15 Were you aware, Mr. Raisler, whether</p> <p>16 or not Lehman cleared futures positions for its</p> <p>17 affiliates either in the U.S. or ex-U.S.?</p> <p>18 A Yes, I am aware.</p> <p>19 Q Can you tell me, sitting here today,</p> <p>20 do you know which affiliates that it cleared</p> <p>21 positions for?</p> <p>22 A In the U.S. markets, I believe it</p> <p>23 cleared for all of its affiliates.</p> <p>24 Q Do you know whether or not Lehman</p> <p>25 cleared for its affiliates outside of the U.S.?</p>	<p>1 Confidential - K. Raisler</p> <p>2 A Yes. It was my understanding that in</p> <p>3 the U.S. markets, LBI, so we can be more precise,</p> <p>4 cleared for all of the non-U.S. affiliates of</p> <p>5 Lehman trading in U.S. markets.</p> <p>6 Q Do you know whether or not LBI</p> <p>7 cleared for non-U.S. affiliates in markets outside</p> <p>8 of the U.S.?</p> <p>9 A I don't believe LBI had clearing</p> <p>10 rights with respect to any markets outside the</p> <p>11 U.S., or at least I am not aware of any.</p> <p>12 Q Was it your understanding of the</p> <p>13 business agreement between Lehman and Barclays,</p> <p>14 sir, that the accounts that non-U.S. affiliates</p> <p>15 had with LBI for clearing futures in the U.S.,</p> <p>16 that those accounts would be transferred to</p> <p>17 Barclays?</p> <p>18 MS. BLOOMER: Objection to form.</p> <p>19 A My understanding was that all of the</p> <p>20 accounts were to be transferred to Barclays.</p> <p>21 Q Did you ever have any discussions</p> <p>22 with anyone, Mr. Raisler, as to the treatment of</p> <p>23 the Lehman affiliate accounts elsewhere in the</p> <p>24 transaction between Lehman and Barclays, by which</p> <p>25 I mean other than as it relates to the futures</p>

Page 106	Page 107
<p>1 Confidential - K. Raisler 2 business? 3 MS. BLOOMER: Objection to form. 4 A I am sorry, I am going to need you to 5 restate that, because I wasn't sure I followed 6 you. 7 Q Let me try it this way. I think you 8 just testified that if a Lehman affiliate outside 9 of the U.S., such as LBIE, for example, had an 10 account with LBI through which LBI would clear 11 LBI's business in the U.S., for example at the 12 CME, that was an account that would be transferred 13 to Barclays. 14 MS. BLOOMER: Again I'm going to 15 object to form and vagueness of the term 16 "account." 17 MR. LACY: You mean futures account. 18 MR. OXFORD: Right. 19 MS. BLOOMER: I still object. 20 BY MR. OXFORD: 21 Q Does that accurately reflect your 22 understanding that the futures account of the 23 non-U.S. Lehman affiliate would be transferred to 24 Barclays? 25 A Yes. That was my understanding.</p>	<p>1 Confidential - K. Raisler 2 Q And did you have an understanding, 3 sir, that other than in respect of futures 4 accounts, that affiliate accounts of LBI were not 5 being transferred to Barclays? 6 MS. BLOOMER: Objection, lacks 7 foundation. 8 THE WITNESS: I am sorry, could you 9 read that back again. 10 (Record read.) 11 A I was not involved in issues 12 associated with non-U.S. affiliates of Lehman's 13 accounts other than in the context of futures, so 14 I would not be in a good position to answer that 15 question. 16 Q The answer is you don't know? 17 MS. BLOOMER: Objection, and instruct 18 the witness not to answer to the extent it 19 calls for the disclosure of privileged 20 communications with Barclays. 21 A I don't recall. 22 Q That's fine, thank you. 23 Sticking with paragraph -- the 24 second -- sorry, the first full paragraph on page 25 two of your letter, Mr. Raisler, you go on to say,</p>
Page 108	Page 109
<p>1 Confidential - K. Raisler 2 "Some of these accounts are accounts that contain 3 no open commodity positions and accounts that are 4 in deficit within the meaning of certain CFTC 5 regulations." 6 Do you see that? 7 A Yes. 8 Q Others may be, quote, house accounts 9 as defined in Regulation 190.01W. 10 A Correct. 11 Q Do you see that? 12 A Yes. 13 Q I don't mean to mischaracterize that. 14 I know there is another cite to the CFR after 15 that. 16 Was it your understanding that you 17 were seeking in this letter, Mr. Raisler, the 18 CFTC's consent for a bulk transfer of LBI 19 proprietary futures trading accounts from Lehman 20 to Barclays? 21 A Basically this letter asks for CFTC 22 permission for the transfer of three frequent 23 types of accounts. If I can read from the bottom 24 of page two, it would be the house accounts, as 25 you just read in the sentence that you just</p>	<p>1 Confidential - K. Raisler 2 highlighted; accounts that are in deficit, which 3 would normally not be transferable except for 4 permission; and accounts that have no open 5 commodity contracts. 6 All three of those accounts without 7 permission would not be transferable. 8 Q And house accounts are -- 9 A The house accounts -- I'm sorry. 10 Q House accounts are the accounts 11 through which Lehman or LBI would conduct 12 proprietary trading; correct? 13 A If I can restate your comment a 14 little differently. The house accounts defined in 15 190.01W would be all of the proprietary accounts 16 of Lehman, which would include the accounts of 17 affiliates which otherwise would be customer 18 accounts on the books of Barclays. 19 Q What do you mean when you say they 20 would otherwise be customer accounts? 21 A When they are transferred from 22 Lehman, the affiliate accounts are not anymore 23 affiliates, they are customers. 24 Q The second type of account permission 25 for the transfer of which you are seeking in this</p>

Page 110	Page 111
<p>1 Confidential - K. Raisler</p> <p>2 letter is accounts that are in deficit. What do</p> <p>3 you mean when you write accounts that are in</p> <p>4 deficit?</p> <p>5 A Basically that means an individual</p> <p>6 customer account on the books of Lehman -- I guess</p> <p>7 technically it could include an affiliate as well,</p> <p>8 but a customer account on the books of Lehman is</p> <p>9 in fact in deficit, so it is -- there is a</p> <p>10 shortfall in that account, and the -- that</p> <p>11 individual customer owes and has an outstanding</p> <p>12 margin call.</p> <p>13 Q The third category is accounts that</p> <p>14 have no open commodity contracts. Can you explain</p> <p>15 what you mean by that, please?</p> <p>16 A A commodity contract for this purpose</p> <p>17 would be a futures position, and some of those</p> <p>18 accounts may have open, open trade equity, that is</p> <p>19 cash or securities, in their segregated account,</p> <p>20 but no actual active futures position.</p> <p>21 Q Would the accounts that you describe</p> <p>22 in point three at the bottom of page two of your</p> <p>23 letter include proprietary accounts, house</p> <p>24 accounts, or would that be limited to customer</p> <p>25 accounts?</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I believe that the house accounts are</p> <p>3 covered by one, and so three would not refer to</p> <p>4 house accounts.</p> <p>5 Q Okay. Moving back up to the first</p> <p>6 full paragraph on page two, the last sentence in</p> <p>7 your letter says, "We understand that LBI has</p> <p>8 sufficient segregated and secured amount funds, as</p> <p>9 well as sufficient regulatory capital pursuant to</p> <p>10 the provisions of the Commodity Exchange Act and</p> <p>11 the Commission's regulations thereunder."</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q Can you tell me what you meant by</p> <p>15 this sentence?</p> <p>16 A I think this is some of what we</p> <p>17 discussed before the break, that up until the time</p> <p>18 of this letter, there had been no defaults by</p> <p>19 Lehman in terms of meeting its obligations to the</p> <p>20 various clearing houses of which it was a member.</p> <p>21 As I indicated before the break as</p> <p>22 well, that doesn't indicate how much capital and</p> <p>23 collateral there was for the future obligations,</p> <p>24 which obviously is the point of concern by the</p> <p>25 OCC, by the CME and by the CFTC as well, and why</p>
Page 112	Page 113
<p>1 Confidential - K. Raisler</p> <p>2 there is a need to get this relief.</p> <p>3 Q Can you tell me, Mr. Raisler, how it</p> <p>4 is you get from the position where there is a lack</p> <p>5 of default by Lehman, in its futures trading, to a</p> <p>6 conclusion that there is sufficient segregated and</p> <p>7 secured amount funds?</p> <p>8 A Well, as indicated here, some of the</p> <p>9 customers are in deficit potentially, so with</p> <p>10 respect to those customers, there would be</p> <p>11 inadequate clearing, segregated or secured funds,</p> <p>12 so it must mean that other customers or the</p> <p>13 buffer, if you will, made it, at that snapshot in</p> <p>14 time, sufficient in terms of secured and</p> <p>15 segregated funds, as well as the regulatory</p> <p>16 capital is not -- is separate.</p> <p>17 But the secured and segregated funds</p> <p>18 would be an aggregate, as I indicated earlier.</p> <p>19 The account would be a customer seg account which</p> <p>20 would aggregate all of the customer positions.</p> <p>21 Effectively, to oversimplify, some customers'</p> <p>22 money is being used to protect those customers</p> <p>23 that are in deficit, so that the total amount of</p> <p>24 money is sufficient.</p> <p>25 Q And it's also true in addition to</p>	<p>1 Confidential - K. Raisler</p> <p>2 customer A potentially covering the obligations of</p> <p>3 customer B, Lehman's buffer money --</p> <p>4 A Correct.</p> <p>5 Q -- would also be covering the</p> <p>6 obligations of a customer who may be in default;</p> <p>7 is that correct?</p> <p>8 A Be clear. In deficit.</p> <p>9 Q Sorry.</p> <p>10 A We didn't say default.</p> <p>11 Yes, that is correct. The</p> <p>12 combination of excess, some customers having more</p> <p>13 in segregation than would be required, combined</p> <p>14 with the buffer, allowed this representation to be</p> <p>15 made at this point in time.</p> <p>16 Q Okay. To be clear, is this</p> <p>17 representation that you made to the CFTC based on</p> <p>18 something other than the fact that Lehman hadn't</p> <p>19 defaulted at any exchange or clearing</p> <p>20 organization, up until the date on which you</p> <p>21 e-mailed the letter?</p> <p>22 A That would be true with respect to</p> <p>23 the seg and secured amounts. The sufficient</p> <p>24 regulatory capital would be a separate calculation</p> <p>25 that would have been represented to us by Lehman.</p>

Page 114	Page 115
<p>1 Confidential - K. Raisler</p> <p>2 Q Okay. We will get to regulated</p> <p>3 capital in a second, and I appreciate the, the</p> <p>4 care with which you answered that.</p> <p>5 Focusing on your statement in your</p> <p>6 letter to the CFTC, "We understand that LBI has</p> <p>7 sufficient segregated and secured amount funds,"</p> <p>8 can you tell me what, what that statement is based</p> <p>9 on.</p> <p>10 A It's based on, one, the absence of</p> <p>11 default, and two, I assume some representations</p> <p>12 that confirm that, that we got from Lehman.</p> <p>13 Q Focusing on the second part of your</p> <p>14 answer, the representations that you assume you</p> <p>15 got from Lehman, can you be more specific about</p> <p>16 any representations you received that LBI has</p> <p>17 sufficient segregated and secured amount funds</p> <p>18 before you wrote this letter to the CFTC?</p> <p>19 A Well, I think that they were able to</p> <p>20 confirm what we generally knew, which is that</p> <p>21 there had not been any defaults. We would take</p> <p>22 significant comfort in that alone, and we were in</p> <p>23 separate touch with the exchanges and clearing</p> <p>24 houses, although that wouldn't guarantee we would</p> <p>25 have been so informed.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q So are the representations that,</p> <p>3 underpin -- withdrawn.</p> <p>4 The representations to you,</p> <p>5 Mr. Raisler, that underpin your statement to the</p> <p>6 CFTC, are simply representations from Lehman that</p> <p>7 there have been no defaults at the exchanges or</p> <p>8 clearing organizations in the customers</p> <p>9 business -- sorry, futures business, or did they</p> <p>10 make additional representations?</p> <p>11 A I would -- I believe that they made a</p> <p>12 representation to us consistent with the words in</p> <p>13 that sentence.</p> <p>14 Q So are you essentially repeating to</p> <p>15 the CFTC what LBI has represented to you?</p> <p>16 A It's actually backwards, but yes.</p> <p>17 And by backwards, I mean that the CFTC demanded we</p> <p>18 make this representation as a condition to their</p> <p>19 taking the action, and so we would have been</p> <p>20 inclined to make the representation if we could</p> <p>21 make it and confirmed it by the two methods I have</p> <p>22 described, no default and the corresponding</p> <p>23 representation from LBI.</p> <p>24 Q Why would the CFTC -- withdrawn.</p> <p>25 Do you know why the CFTC demanded</p>
Page 116	Page 117
<p>1 Confidential - K. Raisler</p> <p>2 that this representation be contained in your</p> <p>3 letter?</p> <p>4 A I don't believe we ever specifically</p> <p>5 discussed it. But if this were not the case, then</p> <p>6 they would be looking to take more dramatic action</p> <p>7 and may not be prepared to allow a movement of the</p> <p>8 type described in this letter.</p> <p>9 Q Do you know -- withdrawn.</p> <p>10 Mr. Raisler, do you know who at LBI</p> <p>11 provided the representation to you about the</p> <p>12 sufficiency of LBI's segregated and secured amount</p> <p>13 funds that you then used as a basis for your</p> <p>14 letter to the CFTC?</p> <p>15 A I don't precisely recall it, but</p> <p>16 again it would be probably the same group led by</p> <p>17 Jeff Jennings.</p> <p>18 Q I think I have this from your earlier</p> <p>19 testimony, but I just want to be sure. Is this</p> <p>20 statement about your understanding of the</p> <p>21 sufficiency of LBI's segregated and secured amount</p> <p>22 funds, is that based on any calculations that you</p> <p>23 or anyone working at your direction or Barclays'</p> <p>24 saw in connection with those accounts?</p> <p>25 MS. BLOOMER: Objection.</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I can answer the first part, which is</p> <p>3 not me nor anybody under my direction. I don't</p> <p>4 believe anybody else at Barclays, but I couldn't</p> <p>5 be sure. And just to be clear on that point, I</p> <p>6 think the use of the words "we understand" are</p> <p>7 important in that regard.</p> <p>8 Q Who is the "we" there, sir?</p> <p>9 A I think "we" in this context is</p> <p>10 probably Sullivan & Cromwell, as best reading of</p> <p>11 the letter. We said, "on behalf of our client,"</p> <p>12 Barclays Capital, Inc., this is a request, so I</p> <p>13 think it would be -- and we use the term "we"</p> <p>14 throughout. I assume we are talking the firm in</p> <p>15 submitting this letter requested.</p> <p>16 Q So it is Sullivan & Cromwell's</p> <p>17 understanding that LBI has sufficient segregated</p> <p>18 and secured amount funds for what purpose, sir?</p> <p>19 MS. BLOOMER: Objection to form.</p> <p>20 A I think the language of the sentence</p> <p>21 picks it up, pursuant to the provisions of the</p> <p>22 Commodity Exchange Act and Commission regulations.</p> <p>23 Q And in layman's terms, sir, is that</p> <p>24 your understanding -- in the last sentence of this</p> <p>25 paragraph we are looking at that begins "we</p>

Page 118	Page 119
<p>1 Confidential - K. Raisler</p> <p>2 understand," does that equate to your</p> <p>3 understanding that there is not a shortfall in the</p> <p>4 segregated and secured amount funds that LBI was</p> <p>5 required under the Commodities Exchange Act and</p> <p>6 the Commission's regulations to maintain?</p> <p>7 MS. BLOOMER: Objection to form.</p> <p>8 A That one got a little complicated.</p> <p>9 Q Yeah, sorry. Let me try this again</p> <p>10 with a little better syntax.</p> <p>11 A Okay. Particularly if we can avoid</p> <p>12 using "layman" when referring to Lehman. That is</p> <p>13 particularly confusing.</p> <p>14 Q In writing that last sentence, sir,</p> <p>15 that begins, "We understand," did, did you believe</p> <p>16 that LBI did not have a shortfall in the</p> <p>17 segregated and secured amount funds that it was</p> <p>18 required to maintain pursuant to the Commodity</p> <p>19 Exchange Act and the Commission's regulations</p> <p>20 thereunder?</p> <p>21 A That would have been our</p> <p>22 understanding at this moment in time, yes.</p> <p>23 Q Thank you.</p> <p>24 Moving down the page to the next</p> <p>25 paragraph, the last sentence of that reads,</p>	<p>1 Confidential - K. Raisler</p> <p>2 "Moreover, regulation 190.06E2. Do you have that,</p> <p>3 sir?</p> <p>4 A Yes.</p> <p>5 Q It goes on to say, "prohibits the</p> <p>6 transfer in respect of any eligible account of</p> <p>7 property whose value," quotes, "would exceed the</p> <p>8 funded balance of such account, based on available</p> <p>9 information as at the close of business on the</p> <p>10 business day immediately preceding the transfer,"</p> <p>11 close quotes, "less the value of prior transfers."</p> <p>12 Do you see that sentence?</p> <p>13 A Yes, yes.</p> <p>14 Q What was the purpose of including</p> <p>15 that sentence in your letter, sir?</p> <p>16 A Because we were seeking an exemption</p> <p>17 from that prohibition, so it clarified, as the</p> <p>18 other parts of the letter did, what we were</p> <p>19 seeking and the contours in which we were seeking</p> <p>20 it.</p> <p>21 Q Can you explain to me what</p> <p>22 prohibition you were seeking exemption for?</p> <p>23 A In this regard, there are certain</p> <p>24 permitted movements of accounts between FCMs, in</p> <p>25 the context of a bankruptcy or in other contexts.</p>
Page 120	Page 121
<p>1 Confidential - K. Raisler</p> <p>2 There are other things that are prohibited absent</p> <p>3 CFTC express approval.</p> <p>4 We were seeking express approval for</p> <p>5 a number of things, one of which was if an account</p> <p>6 had -- if an individual customer's account had</p> <p>7 collateral in excess of that customer's</p> <p>8 requirements, that that money would move with the</p> <p>9 customer's account.</p> <p>10 Q In any part of your letter that I</p> <p>11 marked as 659-A, the final signed one, are you</p> <p>12 seeking permission from the CFTC to move to</p> <p>13 Barclays from LBI any LBI funds that you have</p> <p>14 described previously as a buffer, the additional</p> <p>15 monies that LBI kept in the customer segregated</p> <p>16 and secured accounts?</p> <p>17 A We would not need permission from the</p> <p>18 CFTC to do that.</p> <p>19 Q Thank you. That's all I have for</p> <p>20 that exhibit. Let me mark another one.</p> <p>21 (Exhibit 660-A marked for</p> <p>22 identification as of this date.)</p> <p>23</p> <p>24 Q Mr. Raisler, I have handed you what I</p> <p>25 have marked as Exhibit 660-A, which is an e-mail</p>	<p>1 Confidential - K. Raisler</p> <p>2 with the Bates number BCISC 00009653, and the</p> <p>3 attachments run through 9665.</p> <p>4 If you could take a moment to review</p> <p>5 that and let me know if you have seen it before</p> <p>6 and let me know when you are done, please. Also,</p> <p>7 to the extent you identify any of the possible</p> <p>8 production errors we referenced earlier with this</p> <p>9 document, if you can let me know that, too.</p> <p>10 MS. BLOOMER: Does anyone know why</p> <p>11 the bottom Bates number is the same on all</p> <p>12 of these pages, or on at least a few anyway,</p> <p>13 9662?</p> <p>14 THE WITNESS: It has multiple</p> <p>15 numbers.</p> <p>16 MS. BLOOMER: Right, but the bottom</p> <p>17 number is the same Bates label on multiple</p> <p>18 pages.</p> <p>19 THE WITNESS: It isn't so on the --</p> <p>20 MR. OXFORD: I don't know.</p> <p>21 MR. LACY: And I don't know.</p> <p>22 MR. OXFORD: As long as we can</p> <p>23 refer --</p> <p>24 MR. LACY: What are you looking at?</p> <p>25 MS. BLOOMER: Do you see this says</p>

Page 122	Page 123
<p>1 Confidential - K. Raisler</p> <p>2 9654? The bottom of the two Bates numbers</p> <p>3 doesn't seem to be correct, but the top one</p> <p>4 does.</p> <p>5 MR. LACY: The bottom should just be</p> <p>6 ignored. The bottom number should just be</p> <p>7 ignored.</p> <p>8 A Okay.</p> <p>9 Q Do you recognize this document, sir?</p> <p>10 A Yes, I do.</p> <p>11 Q Can you tell me what it is, please?</p> <p>12 A We are referring specifically to the</p> <p>13 first one of the three?</p> <p>14 Q Yes. The e-mail.</p> <p>15 A The e-mail. Oh, the e-mail. Okay.</p> <p>16 The e-mail is an update about two</p> <p>17 hours later to the CFTC with a new letter that</p> <p>18 changes via deletion the structure of the</p> <p>19 transaction to eliminate the intermediate LLC</p> <p>20 arrangement that was discussed and described in</p> <p>21 the prior letter.</p> <p>22 Q And is the first attachment to that</p> <p>23 letter, sir, is that the final executed letter?</p> <p>24 A Yes, it's an executed letter that is</p> <p>25 intended to supersede the letter that we just</p>	<p>1 Confidential - K. Raisler</p> <p>2 finished discussing, the 659-A.</p> <p>3 Q Again, sir, on the last page, that is</p> <p>4 not your signature on 660-A, is it?</p> <p>5 A No. Again, it is Mr. Gilberg's.</p> <p>6 Q Did you authorize Mr. Gilberg to sign</p> <p>7 for you?</p> <p>8 A I did.</p> <p>9 Q Is it correct, Mr. Raisler, that the</p> <p>10 updated letter doesn't change in any way the</p> <p>11 representation as to Sullivan & Cromwell's</p> <p>12 understanding as to the sufficiency of the</p> <p>13 segregated and secured amount funds that we</p> <p>14 discussed earlier?</p> <p>15 A Correct. This letter only changes,</p> <p>16 as I recall it and understand it, the LLC</p> <p>17 references that were in the letter that we</p> <p>18 previously discussed.</p> <p>19 Q Now, this letter also makes a</p> <p>20 representation, sir, as to Sullivan & Cromwell's</p> <p>21 understanding of the sufficiency as to LBI's</p> <p>22 regulatory capital; is that correct?</p> <p>23 A In that respect, it's not different</p> <p>24 from the last letter.</p> <p>25 Q I am only asking with respect to this</p>
Page 124	Page 125
<p>1 Confidential - K. Raisler</p> <p>2 letter because I realize I forgot to ask you with</p> <p>3 respect to the first letter. I don't mean to</p> <p>4 confuse.</p> <p>5 A Right.</p> <p>6 Q What did -- what did you mean when</p> <p>7 you wrote to the CFTC that you understood that LBI</p> <p>8 has sufficient regulatory capital?</p> <p>9 A As we discussed earlier, regulatory</p> <p>10 capital is required under CFTC legislation and</p> <p>11 rules consistent with a formula that relates to</p> <p>12 the surmise of the customer seg and secured assets</p> <p>13 that it's holding on behalf of customers, and so</p> <p>14 here we would have received a representation, I am</p> <p>15 sure, from Lehman, that they had sufficient</p> <p>16 regulatory capital.</p> <p>17 I did not myself check that. I don't</p> <p>18 know whether anybody at Barclays did either.</p> <p>19 Q Do you know whether or not anyone at</p> <p>20 Sullivan & Cromwell checked that for you?</p> <p>21 A I am certain that nobody else at</p> <p>22 Sullivan & Cromwell checked that for me.</p> <p>23 Q Are you able to testify as to the</p> <p>24 source of the representation made to you about the</p> <p>25 sufficiency of LBI's regulatory capital other than</p>	<p>1 Confidential - K. Raisler</p> <p>2 to say generally that someone at Lehman must have</p> <p>3 done it?</p> <p>4 MS. BLOOMER: I'm going to object to</p> <p>5 the extent you keep saying sufficiency of</p> <p>6 the regulatory capital and leaving off the</p> <p>7 regulations pursuant to which it speaks to</p> <p>8 sufficiency.</p> <p>9 Q Trish's objection is a fair one. I</p> <p>10 don't mean to mischaracterize your letter. I am</p> <p>11 simply seeking that you tell me, as best you are</p> <p>12 able to today, who at Lehman gave either you or</p> <p>13 anyone else at Sullivan & Cromwell the</p> <p>14 representation that LBI had sufficient regulatory</p> <p>15 capital pursuant to the particular provisions of</p> <p>16 the Commodity Exchange Act and the Commission's</p> <p>17 regulations that you reference in your letter to</p> <p>18 the CFTC.</p> <p>19 A In answer to your previous question,</p> <p>20 you are correct.</p> <p>21 Q I am correct that you not able to</p> <p>22 tell me beyond a statement generally that someone</p> <p>23 at Lehman must have done so, but sitting here</p> <p>24 today, sir, you are not able to tell me who that</p> <p>25 person was?</p>

Page 126	Page 127
<p>1 Confidential - K. Raisler</p> <p>2 A That is correct.</p> <p>3 (Exhibit 661-A marked for</p> <p>4 identification as of this date.)</p> <p>5</p> <p>6 Q Mr. Raisler, I have handed you what I</p> <p>7 have marked as Exhibit 661-A, which is an e-mail</p> <p>8 BCISC 00009298, with an attachment that goes</p> <p>9 through 9301.</p> <p>10 A Correct.</p> <p>11 Q Can you tell me, please, focusing on</p> <p>12 the attachment to the e-mail, what that document</p> <p>13 is, please?</p> <p>14 A I am sorry, you want me to focus on</p> <p>15 the e-mail or the attachment?</p> <p>16 Q The attachment to the e-mail.</p> <p>17 A The attachment is a letter from the</p> <p>18 CFTC to me, that approves the request set forth in</p> <p>19 the letter we just finished discussing for</p> <p>20 authorization to transfer the accounts, and the</p> <p>21 terms and the conditions described in the prior</p> <p>22 request.</p> <p>23 Q That it is all I have for that one,</p> <p>24 sir.</p> <p>25 Were you involved, Mr. Raisler, in</p>	<p>1 Confidential - K. Raisler</p> <p>2 Barclays' assumption of Lehman's -- I should say</p> <p>3 LBI's rights and obligations in its futures</p> <p>4 business, by which I mean specifically</p> <p>5 implementation of how Barclays assumes</p> <p>6 responsibilities for those accounts?</p> <p>7 MS. BLOOMER: Objection to form.</p> <p>8 A Generally, yes.</p> <p>9 Q Can you tell me, please, what your</p> <p>10 role was in that regard.</p> <p>11 A In the week starting September 22nd,</p> <p>12 after the approvals, a process began to move</p> <p>13 positions and funds from Lehman to Barclays. I</p> <p>14 was involved in a series of meetings and</p> <p>15 discussions about effectuating that. In</p> <p>16 particular, moving the funds was quite complex and</p> <p>17 was the subject of a lot of back and forth</p> <p>18 involved, not just Barclays and Lehman, but the</p> <p>19 CFTC, the trustee, and JPMorgan.</p> <p>20 Q Which funds are you referring to in</p> <p>21 that last answer, sir?</p> <p>22 A Broadly stated, the collateral that</p> <p>23 was securing the customer positions at the U.S.</p> <p>24 futures exchanges, as well as the collateral that</p> <p>25 was supporting positions on non-U.S. exchanges.</p>
Page 128	Page 129
<p>1 Confidential - K. Raisler</p> <p>2 Q Are these the same funds that were</p> <p>3 held in the customer segregated and secured</p> <p>4 accounts that you have testified to earlier?</p> <p>5 A Yes, that is correct.</p> <p>6 Q Why was the movement of those funds</p> <p>7 complex, sir?</p> <p>8 A We hadn't anticipated it would be</p> <p>9 that complex in the U.S., where the rules are</p> <p>10 quite clear. However, there was a number of</p> <p>11 players who wanted to get comfort that they would</p> <p>12 be protected if they moved the funds. And so a</p> <p>13 process had to be developed in order to effectuate</p> <p>14 those movements.</p> <p>15 Q Who are those players, sir?</p> <p>16 A Well, I guess in particular, JPMorgan</p> <p>17 as the bank that was holding the seg and secured</p> <p>18 funds, they wanted to make sure that transferring</p> <p>19 those funds to Barclays would be consistent with</p> <p>20 authorizations that had been obtained through the</p> <p>21 bankruptcy.</p> <p>22 Q To your knowledge, sir, did JPMorgan</p> <p>23 get the comfort they were seeking in this regard?</p> <p>24 A They did from the trustee.</p> <p>25 Q Tell me what you know about that,</p>	<p>1 Confidential - K. Raisler</p> <p>2 please.</p> <p>3 MS. BLOOMER: Objection, form.</p> <p>4 A I think the, the view that Barclays</p> <p>5 had, and that we had as their counsel, was that</p> <p>6 the bankruptcy court's approval was sufficient and</p> <p>7 should have been sufficient for JPMorgan to</p> <p>8 authorize the movement of the funds.</p> <p>9 JPMorgan saw it differently, and</p> <p>10 sought to get express approval from the trustee.</p> <p>11 The form and content of that approval was</p> <p>12 negotiated and it took a number of days.</p> <p>13 Q When did those negotiations take</p> <p>14 place, sir?</p> <p>15 A I think the positions, the futures</p> <p>16 positions moved on the 22nd. So I would assume</p> <p>17 that discussions about the collateral moving would</p> <p>18 have begun at that time. And I believe the funds</p> <p>19 started to move and finally were relocated at</p> <p>20 Barclays around the 20 -- I am sorry, around the</p> <p>21 first week in October.</p> <p>22 Q The customer and -- customer</p> <p>23 segregated and secured funds that were moved in</p> <p>24 early October, sir, to your knowledge, did they</p> <p>25 include any assets that were Lehman assets,</p>

Page 130	Page 131
<p>1 Confidential - K. Raisler</p> <p>2 specifically the buffer that you have described</p> <p>3 earlier, between, I suppose the minimum that was</p> <p>4 required to be in these accounts and what was</p> <p>5 desirable from a business perspective to have in</p> <p>6 these accounts?</p> <p>7 MS. BLOOMER: Objection to form.</p> <p>8 MR. LACY: Object to the form of the</p> <p>9 question.</p> <p>10 MR. OXFORD: Withdrawn.</p> <p>11 Q Did, did the accounts and the funds,</p> <p>12 the segregated and secured funds that were being</p> <p>13 moved in October, did they include LBI assets as</p> <p>14 well as assets that were the property of</p> <p>15 customers?</p> <p>16 A I think I can answer that question</p> <p>17 this way: It was my understanding that all of the</p> <p>18 property that was in the seg and secured accounts</p> <p>19 moved to Barclays.</p> <p>20 Q And at the time it was moved, sir,</p> <p>21 did you have an understanding one way or the other</p> <p>22 as to whether the property included property of</p> <p>23 LBI as well as property of customers?</p> <p>24 A I don't believe I had an</p> <p>25 understanding one way or the other, other than my</p>	<p>1 Confidential - K. Raisler</p> <p>2 best recollection was that all of the collateral</p> <p>3 in those accounts moved to Barclays.</p> <p>4 Q Okay. Just based on your general</p> <p>5 experience and familiarity with the industry, sir,</p> <p>6 would you have expected the property in those seg</p> <p>7 and secured accounts that moved to Barclays to</p> <p>8 include LBI property as well as customer property?</p> <p>9 MR. LACY: Object to form of the</p> <p>10 question.</p> <p>11 A Yes.</p> <p>12 Q Do you know one way or the other,</p> <p>13 sir, whether that expectation was also Barclays'</p> <p>14 expectation at the time the funds were moved in</p> <p>15 early October?</p> <p>16 MS. BLOOMER: Object. And I am going</p> <p>17 to instruct the witness not to disclose the</p> <p>18 substance of communications with Barclays.</p> <p>19 A Yes.</p> <p>20 Q Do you know, sir, that Barclays did</p> <p>21 in fact expect that the customer seg and secured</p> <p>22 amounts that were moved in early October did</p> <p>23 include LBI assets in addition to customer assets?</p> <p>24 MS. BLOOMER: Object to the form, and</p> <p>25 the same privilege objection.</p>
Page 132	Page 133
<p>1 Confidential - K. Raisler</p> <p>2 THE WITNESS: I'm sorry. Can I get</p> <p>3 that read back. I just want to understand</p> <p>4 the word "knew" in that context.</p> <p>5 (Record read.)</p> <p>6 A I think so, although I don't</p> <p>7 specifically recall that discussion at that time.</p> <p>8 Q Do you know, Mr. Raisler, that --</p> <p>9 withdrawn.</p> <p>10 Do you know whether or not Barclays</p> <p>11 knew at the time of the closing of the transaction</p> <p>12 on the 22nd of September, whether or not the</p> <p>13 customer seg and secured funds held by Lehman</p> <p>14 included not just customer property, but LBI</p> <p>15 assets as well?</p> <p>16 MS. BLOOMER: I am going to object,</p> <p>17 and I am going to object generally to you</p> <p>18 asking this witness from Sullivan & Cromwell</p> <p>19 questions about what he knew about what</p> <p>20 Barclays believed at the time.</p> <p>21 Obviously, that would have been</p> <p>22 conveyed through discussions with counsel,</p> <p>23 so I am going to instruct the witness not to</p> <p>24 disclose the substance or things he learned</p> <p>25 through communications with Barclays.</p>	<p>1 Confidential - K. Raisler</p> <p>2 To the extent there were discussions</p> <p>3 that you had in the presence of third</p> <p>4 parties in which you learned information</p> <p>5 that would be responsive to the question,</p> <p>6 you can answer.</p> <p>7 A I don't have anything to add to my</p> <p>8 prior answers on this.</p> <p>9 Q Other than the transfer of segregated</p> <p>10 and secured funds, Mr. Raisler, were you involved</p> <p>11 in any other of the mechanics of the</p> <p>12 implementation of Barclays' purchase of the Lehman</p> <p>13 futures business?</p> <p>14 A In the U.S. largely, no. But outside</p> <p>15 the U.S., we were looking at not just moving of</p> <p>16 funds, but also moving of positions, and that was</p> <p>17 a more complicated undertaking.</p> <p>18 I guess also, I don't want to leave a</p> <p>19 gap. In the U.S., I was also involved in not just</p> <p>20 the seg and secured funds but also the movement of</p> <p>21 positions and assets of a proprietary sort, either</p> <p>22 positions of LBI or of its affiliates or of</p> <p>23 customers of its affiliates.</p> <p>24 Q Turning first to your involvement</p> <p>25 with the transfer of the U.S. business, sir. We</p>

Page 134	Page 135
<p>1 Confidential - K. Raisler</p> <p>2 discussed earlier the transfer and assumption</p> <p>3 agreement that was executed between Barclays, the</p> <p>4 OCC and SIPA trustee. Do you recall that</p> <p>5 testimony?</p> <p>6 A Yes.</p> <p>7 Q Were there any other agreements put</p> <p>8 in place in connection with U.S.-based futures</p> <p>9 business with any other exchange or clearing,</p> <p>10 organization to your knowledge?</p> <p>11 A No, there were not, to my knowledge.</p> <p>12 I also don't specifically recall, but I don't know</p> <p>13 that the transfer and assumption agreement dealt</p> <p>14 with futures either.</p> <p>15 Q Can you tell me, please, what your</p> <p>16 involvement was, sir, in moving proprietary assets</p> <p>17 or positions of LBI or LBI's affiliates from</p> <p>18 Lehman to Barclays?</p> <p>19 A I can recall generally discussions</p> <p>20 with Barclays, with Lehman and with the exchanges</p> <p>21 on those movements of funds and positions. The</p> <p>22 specifics are a little less clear.</p> <p>23 Q Who at Lehman were you discussing the</p> <p>24 movement of positions and collateral with?</p> <p>25 A This, probably during this time</p>	<p>1 Confidential - K. Raisler</p> <p>2 period would be more intensely with Ron Filler</p> <p>3 than anybody else.</p> <p>4 Q What were your discussions with</p> <p>5 Mr. Filler?</p> <p>6 A I think we, we shared information</p> <p>7 about what we respectively learned, primarily in</p> <p>8 the foreign markets, about what they were doing</p> <p>9 with positions and what they were doing with</p> <p>10 collateral. And we discussed less actively what</p> <p>11 was going on in the U.S., which was a little bit</p> <p>12 clearer.</p> <p>13 Q Did Barclays enter into an agreement</p> <p>14 with the Chicago Mercantile Exchange in connection</p> <p>15 with its assumption of the rights and obligations</p> <p>16 from Lehman of Lehman's futures business?</p> <p>17 A No. One wouldn't expect that there</p> <p>18 would be such an agreement, because the -- between</p> <p>19 the order of the CFTC, which they would have</p> <p>20 gotten a copy of, and the bankruptcy approval</p> <p>21 order itself, the instructions were clear as to</p> <p>22 what they would have to do. They are actually</p> <p>23 copied on the CFTC letter.</p> <p>24 Q Dealing with the ex-U.S. futures</p> <p>25 positions, Mr. Raisler, did Barclays enter into</p>
Page 136	Page 137
<p>1 Confidential - K. Raisler</p> <p>2 any agreements with any exchange, clearing</p> <p>3 organization or other broker dealer in connection</p> <p>4 with its assumption of LBI's rights and</p> <p>5 obligations to the positions and collateral?</p> <p>6 A Not to my knowledge, and I think I</p> <p>7 would know.</p> <p>8 Q Why would you think you would know?</p> <p>9 A Because in part that was one of the</p> <p>10 things I was working on during the time period.</p> <p>11 So had there been anything negotiated, I think I</p> <p>12 would have heard about it.</p> <p>13 Again, the exchanges and clearing</p> <p>14 houses were taking action pursuant to whatever</p> <p>15 their legal regime was, and there was a very</p> <p>16 substantial amount of ambiguity about the legal</p> <p>17 regimes around the world and actions that would be</p> <p>18 taken, in particular confusion around releasing</p> <p>19 funds there were held by affiliates of LBI who</p> <p>20 might have been the introducing or clearing</p> <p>21 members of those foreign exchanges.</p> <p>22 Q How is it Barclays went about getting</p> <p>23 access to the positions and funds that were in</p> <p>24 Lehman's futures accounts outside of the U.S.?</p> <p>25 MS. BLOOMER: Objection to form,</p>	<p>1 Confidential - K. Raisler</p> <p>2 assumes facts not in evidence.</p> <p>3 A Well, first of all, that project is</p> <p>4 still ongoing. Those monies that -- in some cases</p> <p>5 in some jurisdictions the positions moved without</p> <p>6 the collateral, and in some situations the</p> <p>7 positions didn't move and the collateral didn't</p> <p>8 move.</p> <p>9 As a general matter, the collateral</p> <p>10 has been slow to move in every location around the</p> <p>11 world, in part because or in large part because</p> <p>12 the position collateral was being held by an</p> <p>13 affiliate of Lehman who itself had</p> <p>14 bankruptcy-related issues and concerns.</p> <p>15 So, this was a very difficult</p> <p>16 project, one in its scale that was without</p> <p>17 precedent. And so the ability to recover these</p> <p>18 monies has been an ongoing process.</p> <p>19 I think there has been some limited</p> <p>20 amount of success with respect to a few foreign</p> <p>21 accounts that were being held by third-party</p> <p>22 brokers, but even there, those brokers have not</p> <p>23 been willing to give the money to Barclays but</p> <p>24 instead have returned the money to, broadly</p> <p>25 stated, the Lehman estate, which means in those</p>

Page 138	Page 139
<p>1 Confidential - K. Raisler</p> <p>2 situations where Lehman has taken over the</p> <p>3 positions -- I mean Barclays has taken over the</p> <p>4 positions of Lehman in those foreign</p> <p>5 jurisdictions, it's had to fund the obligations,</p> <p>6 the collateral obligations, from its own account,</p> <p>7 which just highlight the complexity of the</p> <p>8 transaction, broadly stated.</p> <p>9 Q Are you able to tell me on an</p> <p>10 exchange by exchange or broker dealer by broker</p> <p>11 dealer basis where Barclays has moved positions</p> <p>12 and/or collateral? Again, outside the U.S.</p> <p>13 MS. BLOOMER: Objection to form.</p> <p>14 MR. LACY: I'm sorry. Go ahead.</p> <p>15 A Okay. I can answer that question</p> <p>16 with respect to some of the jurisdictions but not</p> <p>17 all.</p> <p>18 Q Okay. With respect to the</p> <p>19 jurisdictions where you can answer, can you tell</p> <p>20 me where Barclays has moved positions and or</p> <p>21 collateral?</p> <p>22 MS. BLOOMER: Objection to form.</p> <p>23 A I can give you my best understanding</p> <p>24 of that.</p> <p>25 Q That is all I am asking for.</p>	<p>1 Confidential - K. Raisler</p> <p>2 A Right.</p> <p>3 In the U.K. my understanding is that</p> <p>4 positions have moved to Barclays, but with very</p> <p>5 limited exceptions collateral has not moved.</p> <p>6 With respect to Germany and Eurex,</p> <p>7 here again, positions moved and collateral has not</p> <p>8 moved. I think in this context without exception</p> <p>9 collateral has not moved.</p> <p>10 In Japan, there is supposed to be a</p> <p>11 bankruptcy hearing coming up, at which to decide</p> <p>12 whether to release the collateral funds, but</p> <p>13 again, the positions have moved without the</p> <p>14 collateral.</p> <p>15 Singapore, the same.</p> <p>16 In some jurisdictions that I haven't</p> <p>17 named, exchanges liquidated the positions of the</p> <p>18 customers leaving in question where the and how</p> <p>19 the excess collateral, if there was any excess,</p> <p>20 could be released and to whom, but that being</p> <p>21 subject to the local jurisdiction's bankruptcy</p> <p>22 regime.</p> <p>23 In Australia, as I indicated earlier,</p> <p>24 the positions moved, the collateral has not moved</p> <p>25 to Barclays to this date, to my knowledge. It has</p>
Page 140	Page 141
<p>1 Confidential - K. Raisler</p> <p>2 been released back to LBI, but not to Barclays.</p> <p>3 To be complete, in each of these</p> <p>4 contexts that I have just addressed to you, I may</p> <p>5 not be completely current on events, because</p> <p>6 things continue to move, and we have not been as</p> <p>7 intensely involved as we were in the weeks</p> <p>8 immediately following the transaction.</p> <p>9 Q In the instances where positions have</p> <p>10 moved, Mr. Raisler, did Barclays enter into any</p> <p>11 agreements with the broker dealers or any other</p> <p>12 third party with whom or through whom these</p> <p>13 positions were placed?</p> <p>14 A As I indicated, for the most part,</p> <p>15 most of the jurisdictions in the world were, the</p> <p>16 futures broker that LBI was trading through was an</p> <p>17 affiliate of Lehman, and in almost all of those</p> <p>18 cases that affiliate is in some sort of insolvency</p> <p>19 regime.</p> <p>20 There have been no agreements that I</p> <p>21 am aware of with respect to any of them, and that</p> <p>22 has locked up money in those situations. The</p> <p>23 positions are moved at the direction of the</p> <p>24 exchange and clearing house rather than the</p> <p>25 direction of the broker, and so positions can move</p>	<p>1 Confidential - K. Raisler</p> <p>2 even and collateral is stuck in an insolvent or</p> <p>3 bankrupt entity.</p> <p>4 Q Has Barclays then been in touch with</p> <p>5 foreign exchanges and clearing houses in an effort</p> <p>6 to get those organizations to move the positions?</p> <p>7 A And the collateral, yes, and I would</p> <p>8 also add to that equation, foreign regulators.</p> <p>9 Q Has Barclays entered into any</p> <p>10 agreements with foreign exchanges or clearing</p> <p>11 houses in connection with its efforts to have the</p> <p>12 positions and collateral moved to Barclays?</p> <p>13 A Again, not to my knowledge, and I</p> <p>14 think I would know. Again, I think each of these</p> <p>15 decisions are effectively self-effectuating</p> <p>16 pursuant to local law, so, one wouldn't expect</p> <p>17 that there would be agreements in those</p> <p>18 situations.</p> <p>19 Q Has Barclays, to your knowledge,</p> <p>20 Mr. Raisler, assumed all of LBI's obligations with</p> <p>21 respect to futures trading at foreign exchanges</p> <p>22 and clearing houses?</p> <p>23 MR. LACY: Objection. Could you make</p> <p>24 clear whether you are talking about the</p> <p>25 obligations on the clearing house side as</p>

Page 142	Page 143
<p>1 Confidential - K. Raisler</p> <p>2 opposed to the customer side?</p> <p>3 MR. OXFORD: Yes, sorry, I meant on</p> <p>4 the clearing house side.</p> <p>5 A I'm sorry, lost the train of the</p> <p>6 question there.</p> <p>7 Q Let me try it this way: Has</p> <p>8 Barclays, to your knowledge, Mr. Raisler, assumed</p> <p>9 LBI's clearing obligations with respect to the</p> <p>10 former Lehman futures positions at foreign</p> <p>11 exchanges and clearing houses?</p> <p>12 MR. LACY: Objection. That made it</p> <p>13 worse.</p> <p>14 A To the extent I understand your</p> <p>15 question, I think the answer is yes. When the</p> <p>16 positions moved, to the extent that they moved to</p> <p>17 Barclays, Barclays would assume the obligations to</p> <p>18 the clearing house that previously had been</p> <p>19 assumed by the affiliate or other entity that was</p> <p>20 previously clearing those positions for LBI.</p> <p>21 MR. OXFORD: Can we go off for a</p> <p>22 second.</p> <p>23 (Recess taken.)</p> <p>24 BY MR. OXFORD:</p> <p>25 Q Mr. Raisler, I am handing you what</p>	<p>1 Confidential - K. Raisler</p> <p>2 has been marked previously in these depositions as</p> <p>3 Exhibit 556. If you could take a moment to review</p> <p>4 that and let me know whether you have seen this</p> <p>5 document before, please.</p> <p>6 A Yes.</p> <p>7 Q In what context have you seen that</p> <p>8 document, sir?</p> <p>9 A I think I have seen it near</p> <p>10 contemporaneous with the date on it at one of the</p> <p>11 early meetings.</p> <p>12 Q Do you know who Alasdair Hodge is?</p> <p>13 A Yes, I do know who Alasdair Hodge is.</p> <p>14 Q Who is he?</p> <p>15 A Alasdair Hodge is, I guess,</p> <p>16 technically I think Tim Stack's boss. He runs</p> <p>17 futures or at the time I think he ran futures</p> <p>18 globally, whereas Tim Stack ran futures in the</p> <p>19 U.S.</p> <p>20 Q Generally speaking, Mr. Raisler, does</p> <p>21 this memorandum reflect the meeting that you</p> <p>22 attended on the 15th of September, 2008, that you</p> <p>23 testified to this morning?</p> <p>24 MR. LACY: Object to the form of the</p> <p>25 question.</p>
Page 144	Page 145
<p>1 Confidential - K. Raisler</p> <p>2 A Broadly stated. The goal of the</p> <p>3 meeting on Monday was to talk about a potential</p> <p>4 acquisition of the Lehman Brothers futures</p> <p>5 business, and this memo speaks to that, so, to</p> <p>6 that extent, yes.</p> <p>7 I think the memo -- I think as we</p> <p>8 discussed earlier, other events sort of overtook</p> <p>9 this memo in terms of a broader acquisition</p> <p>10 effort. This is actually a siloed -- this memo</p> <p>11 reflects a more siloed discussion of just looking</p> <p>12 at this business and not all the other capital</p> <p>13 markets activity that was going on within the</p> <p>14 Lehman-Barclays world.</p> <p>15 Q If you turn to the third paragraph</p> <p>16 that begins, "Lehman Brothers' future business</p> <p>17 overview." Do you see that?</p> <p>18 A Um-hum.</p> <p>19 Q It says, "Lehman's futures business</p> <p>20 consists of approximately 100 institutional</p> <p>21 clients and total global futures revenues of</p> <p>22 approximately \$250 million."</p> <p>23 Do you see that?</p> <p>24 A Yes.</p> <p>25 Q Does that reflect the discussion that</p>	<p>1 Confidential - K. Raisler</p> <p>2 took place on September 15th at the meeting that</p> <p>3 you had with Barclays and Lehman that day?</p> <p>4 MR. LACY: I object to the form of</p> <p>5 the question. I don't know what you mean by</p> <p>6 "reflect."</p> <p>7 Q Do you understand the question, sir?</p> <p>8 A Let me try to answer it in my words.</p> <p>9 I think during the course of the</p> <p>10 meeting, these were the broad high-level data</p> <p>11 points that were shared by Lehman with the</p> <p>12 Barclays team.</p> <p>13 Q And those high-level data points</p> <p>14 include the sentence I just read or at least the</p> <p>15 substantive information contained in the sentence</p> <p>16 I just read about what Lehman's futures business</p> <p>17 consists of in terms of clients and revenue?</p> <p>18 A Correct. And while not trying to get</p> <p>19 ahead of you, the rest of the paragraph as well.</p> <p>20 Q Okay, thank you. I appreciate that.</p> <p>21 Towards the bottom of that paragraph,</p> <p>22 sir, in the memorandum, it notes that Lehman</p> <p>23 futures operates under two legal entities, LBI</p> <p>24 being the U.S.-based FCM and LBIE being the</p> <p>25 European-based FCM. Do you see that?</p>

Page 146	Page 147
<p>1 Confidential - K. Raisler</p> <p>2 A Yes.</p> <p>3 Q Was it your understanding as of the</p> <p>4 date of this memo, the 15th of September, that</p> <p>5 Barclays was intending to buy both the U.S.-based</p> <p>6 FCM and the European-based business?</p> <p>7 MS. BLOOMER: Object to the form of</p> <p>8 the question.</p> <p>9 A That needs a little clarification. I</p> <p>10 think that, again in my words, I think that the</p> <p>11 transaction was to take over all of the</p> <p>12 futures-based businesses of LBI and its</p> <p>13 affiliates. So, it would embrace the futures</p> <p>14 customers that were -- I am pausing here because I</p> <p>15 think that the transaction that was being</p> <p>16 discussed was -- on the 15th was really about</p> <p>17 LBI's business.</p> <p>18 It interacted with its affiliates in</p> <p>19 a variety of ways, and some of those affiliate</p> <p>20 customers ultimately could have come over to LBI,</p> <p>21 but -- to Barclays. But I think that the deal</p> <p>22 that I -- as I am now thinking about it, was to</p> <p>23 taking over the LBI futures business, and to the</p> <p>24 extent that there were other businesses, that was</p> <p>25 really not part of the transaction.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q Okay, thank you.</p> <p>3 Do you recall any discussion between</p> <p>4 Barclays and Lehman at the meeting on the 15th or</p> <p>5 at any time that week about the creditworthiness</p> <p>6 of Lehman's clients?</p> <p>7 A Yes. I think that there were some</p> <p>8 again high-level discussions about high-quality</p> <p>9 clients.</p> <p>10 Q Can you be a little more specific</p> <p>11 about what those discussion were?</p> <p>12 A I think there were some clients who</p> <p>13 were identified who would have been known to us,</p> <p>14 both Barclays and myself, as important or premier</p> <p>15 institutional users in the market.</p> <p>16 Q Do you recall any discussions that</p> <p>17 week, Mr. Raisler, about any clients that would</p> <p>18 not be considered premier or might be considered a</p> <p>19 credit risk for Barclays to take on as customers?</p> <p>20 MS. BLOOMER: Objection to form.</p> <p>21 A I think during the course of the week</p> <p>22 of September 15th, a lot of blue chip</p> <p>23 institutional customers became credit risks, so,</p> <p>24 it was a chaotic time period, and Lehman itself</p> <p>25 might have been considered blue chip even a week</p>
Page 148	Page 149
<p>1 Confidential - K. Raisler</p> <p>2 before, so I don't know that there was any real</p> <p>3 security or feeling that any individual client was</p> <p>4 in fact secure during this time period. And by</p> <p>5 secure, I mean creditworthy.</p> <p>6 Q Under the heading transaction</p> <p>7 benefits and risks, do you see there is a -- three</p> <p>8 paragraphs down, the words "key risk" appear. Do</p> <p>9 you see that, Mr. Raisler?</p> <p>10 A Yes.</p> <p>11 Q It says, "Loss of key clients due to</p> <p>12 inability to execute expedient transactions." Do</p> <p>13 you see that?</p> <p>14 A Yes.</p> <p>15 Q At any of the meetings that you were</p> <p>16 present in, between Lehman and Barclays, were any</p> <p>17 other risks to Barclays identified?</p> <p>18 A Yes. The financial risk of</p> <p>19 non-performance was what we were spending almost</p> <p>20 all of our time on. That could be a whole range</p> <p>21 of non-performances, but as we tried to get a</p> <p>22 handle on the accounts and the customers and the</p> <p>23 proprietary positions, the risks that they</p> <p>24 presented in a volatile chaotic market were the</p> <p>25 center risks that I would have described</p>	<p>1 Confidential - K. Raisler</p> <p>2 discussing during that week.</p> <p>3 Q In your last answer you mean</p> <p>4 non-performance by whom?</p> <p>5 A Non-performance by the Lehman</p> <p>6 proprietary account positions, that is not having</p> <p>7 sufficient capital to meet those losing positions,</p> <p>8 and non-performance by individual customers on</p> <p>9 their obligations as futures customers.</p> <p>10 Q Turning the page, sir, there is --</p> <p>11 the second paragraph, number two, is headed</p> <p>12 "Additional Capital Requirements." Do you see</p> <p>13 that?</p> <p>14 A Yes.</p> <p>15 Q Did you have any understanding, sir,</p> <p>16 at any time whether or not Barclays required its</p> <p>17 acquisition of the futures business of Lehman to</p> <p>18 be capital accretive?</p> <p>19 A I am sorry. I'm going to have to ask</p> <p>20 you to define what you mean by "capital</p> <p>21 accretive."</p> <p>22 Q Do you have any understanding of what</p> <p>23 that term means, sir?</p> <p>24 MS. BLOOMER: Objection to form.</p> <p>25 A I would be guessing.</p>

Page 150	Page 151
<p>1 Confidential - K. Raisler</p> <p>2 Q You would be guessing as to what it</p> <p>3 means to you?</p> <p>4 A Right. I didn't -- my accounting</p> <p>5 classes are far behind me, and I wouldn't want to</p> <p>6 be wrong in making a wrong assumption about what</p> <p>7 you mean there, so.</p> <p>8 Q Do you see under the second heading</p> <p>9 the last sentence says, "We require senior</p> <p>10 management approval related to such a capital</p> <p>11 increase"?</p> <p>12 A Correct.</p> <p>13 Q Did you have any discussions with</p> <p>14 anybody in the week of the 15th through the</p> <p>15 closing of the transaction, sir, that Barclays be</p> <p>16 required to increase their capital to take on the</p> <p>17 futures business?</p> <p>18 MS. BLOOMER: I object to the</p> <p>19 question and instruct the witness not to</p> <p>20 disclose the substance of communications</p> <p>21 that were not held in the presence of Lehman</p> <p>22 or any other third party.</p> <p>23 A I think from the earliest meetings</p> <p>24 with Lehman and Barclays, it was understood that</p> <p>25 additional capital would be required.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q What is the basis for that answer,</p> <p>3 sir?</p> <p>4 A The goal of the transaction was</p> <p>5 substantially to increase the futures business of</p> <p>6 Barclays. That was the opportunity that the</p> <p>7 business people saw. And if are you going to</p> <p>8 substantially increase your business, then that</p> <p>9 means that you have more customer segregated funds</p> <p>10 and therefore you need more capital.</p> <p>11 Q Were you ever involved, Mr. Raisler,</p> <p>12 in any discussions about whether or not Lehman's</p> <p>13 own proprietary assets in the futures business,</p> <p>14 including but not limited to the buffer funds that</p> <p>15 you described before in the customer seg and</p> <p>16 secured accounts, would impact the need for</p> <p>17 additional capital?</p> <p>18 MS. BLOOMER: Objection to form.</p> <p>19 A None that I recall.</p> <p>20 Q Okay. That is all I have for that</p> <p>21 exhibit. Thanks.</p> <p>22 The letters, Mr. Raisler, that you</p> <p>23 wrote to the CFTC that we looked at this morning,</p> <p>24 do you remember those letters?</p> <p>25 A Yes.</p>
Page 152	Page 153
<p>1 Confidential - K. Raisler</p> <p>2 Q I think I had marked them as 660-A</p> <p>3 and 661-A.</p> <p>4 A I think 661 is the letter back. We</p> <p>5 had 659-A and 660-A were the letters to, and 661-A</p> <p>6 was the letter back.</p> <p>7 Q Thank you, appreciate that.</p> <p>8 Did you get approval from Barclays</p> <p>9 before you sent those letters to the CFTC?</p> <p>10 MS. BLOOMER: Objection to form.</p> <p>11 You can answer to the extent you</p> <p>12 don't disclose the substance of your</p> <p>13 discussions.</p> <p>14 A Yes.</p> <p>15 Q Was Barclays aware of the</p> <p>16 representations from Lehman upon which you relied</p> <p>17 in writing those letters, sir? And particularly,</p> <p>18 I am directing this question to the</p> <p>19 representations as to the sufficient segregated</p> <p>20 and secured amount funds that we discussed</p> <p>21 earlier.</p> <p>22 MS. BLOOMER: Objection, lacks</p> <p>23 foundation and same privilege objection and</p> <p>24 instruction.</p> <p>25 A Again, with the caveats that we put</p>	<p>1 Confidential - K. Raisler</p> <p>2 on those representations from our discussion this</p> <p>3 morning, the answer is yes.</p> <p>4 Q I am handing you, Mr. Raisler, a copy</p> <p>5 of the asset purchase agreement in this matter</p> <p>6 that has been marked previously as Exhibit 1.</p> <p>7 Have you seen this document before,</p> <p>8 sir?</p> <p>9 A Yes.</p> <p>10 Q When was the first time you saw this</p> <p>11 document?</p> <p>12 A I don't recall, but it was</p> <p>13 substantially after it was signed.</p> <p>14 Q Was it after the transaction closed</p> <p>15 on September 22nd, 2008?</p> <p>16 A Yes. I may have had it sent to me by</p> <p>17 somebody during the course of the dealings, but I</p> <p>18 don't recall ever having sat down and read it for</p> <p>19 months after.</p> <p>20 Q And you were not involved in the</p> <p>21 negotiation of this document?</p> <p>22 A That is correct.</p> <p>23 Q And have you spoken with anybody who</p> <p>24 was involved in the negotiation of this document,</p> <p>25 specifically about the effect of this document, if</p>

Page 154	Page 155
<p>1 Confidential - K. Raisler</p> <p>2 any, on Barclays' acquisition of Lehman's futures</p> <p>3 business?</p> <p>4 MS. BLOOMER: Objection, and I</p> <p>5 instruct the witness not to disclose the</p> <p>6 substance of discussions with Barclays or</p> <p>7 its other representatives.</p> <p>8 A The answer is no.</p> <p>9 Q Is it safe to say, sir, then that you</p> <p>10 don't have a view whether or not this document</p> <p>11 conveys to Barclays any particular asset</p> <p>12 associated with Lehman's futures business?</p> <p>13 MS. BLOOMER: Objection to form of</p> <p>14 the question.</p> <p>15 A Actually, I don't have a view on this</p> <p>16 document at all.</p> <p>17 Q That gets us done very quickly.</p> <p>18 A Right.</p> <p>19 Q Mr. Raisler, I am handing you what's</p> <p>20 been marked as Exhibit 25 previously in this</p> <p>21 matter, which is the clarification letter. And</p> <p>22 you will not be surprised to learn that I have a</p> <p>23 similar set of questions with respect to this</p> <p>24 document as I did --</p> <p>25 A You are not going to be surprised to</p>	<p>1 Confidential - K. Raisler</p> <p>2 hear the same answers then; right?</p> <p>3 Q I will not.</p> <p>4 When was the first time you saw this</p> <p>5 document, sir?</p> <p>6 A I might have seen it the same time I</p> <p>7 saw the asset purchase agreement, which would have</p> <p>8 been sometime substantially after the transaction</p> <p>9 closed.</p> <p>10 Q Did anyone consult with you,</p> <p>11 Mr. Raisler, to your knowledge, during the</p> <p>12 drafting of this agreement?</p> <p>13 MS. BLOOMER: Objection.</p> <p>14 MR. LACY: About the agreement?</p> <p>15 MR. OXFORD: Yes.</p> <p>16 A No.</p> <p>17 Q And just so we are clear, this</p> <p>18 clarification letter is dated the 20th of</p> <p>19 September, but it was executed on or about the</p> <p>20 22nd of September, 2008. That doesn't change your</p> <p>21 last answer, does it?</p> <p>22 A No, it does not.</p> <p>23 MS. BLOOMER: Objection to the form</p> <p>24 of that question.</p> <p>25 Q And conversely, you don't have an</p>
Page 156	Page 157
<p>1 Confidential - K. Raisler</p> <p>2 opinion as to whether or not this document</p> <p>3 transfers to Barclays any particular asset that</p> <p>4 relates in any way to Lehman's futures business?</p> <p>5 MS. BLOOMER: Object to the form.</p> <p>6 A As with my comment on the asset</p> <p>7 purchase agreement, I don't have a view on the</p> <p>8 document at all.</p> <p>9 Q Okay, thank you.</p> <p>10 Mr. Raisler, I'm handing you the</p> <p>11 transfer and assumption agreement in this case</p> <p>12 previously marked as Exhibit 51. If you could</p> <p>13 just take a moment to review that document and let</p> <p>14 me know when you are done, sir.</p> <p>15 MS. BLOOMER: Do you know whose</p> <p>16 handwriting is on that first page?</p> <p>17 MR. OXFORD: The underlining?</p> <p>18 MS. BLOOMER: Yes.</p> <p>19 MR. OXFORD: I do not. To the best</p> <p>20 of my knowledge, this is the execution copy.</p> <p>21 A Okay.</p> <p>22 Q You have seen this document before,</p> <p>23 sir?</p> <p>24 A Yes, I have.</p> <p>25 Q When was the first time you saw this</p>	<p>1 Confidential - K. Raisler</p> <p>2 document?</p> <p>3 A This document I might have seen as</p> <p>4 early as Friday the 19th in some kind of draft</p> <p>5 form.</p> <p>6 Q How is it you came to see a draft of</p> <p>7 it?</p> <p>8 A I think as I --</p> <p>9 Q Of this document, sir.</p> <p>10 A I'm sorry.</p> <p>11 I think as I testified earlier, I had</p> <p>12 been in contact with OCC, and they had expressed</p> <p>13 concerns about their security around the Lehman</p> <p>14 accounts over the Friday settlement and the</p> <p>15 weekend. And as a result, there were discussions</p> <p>16 about creating some degree of certainty for OCC,</p> <p>17 and while I didn't draft, and to my best</p> <p>18 recollection didn't comment, on this agreement, I</p> <p>19 was made aware of it, and it was the plan to</p> <p>20 address OCC's concerns.</p> <p>21 Q To your understanding, Mr. Raisler,</p> <p>22 does this document govern the futures that are</p> <p>23 cleared through the OCC?</p> <p>24 A Yeah, I testified this morning that I</p> <p>25 didn't think so. Looking at it now, and I don't</p>

Page 158	Page 159
<p>1 Confidential - K. Raisler</p> <p>2 remember -- the definition here is the account,</p> <p>3 and it references number 74, 84 and 273. I think</p> <p>4 that -- and my recollection is a little rusty on</p> <p>5 this -- I think that 84 might have been the</p> <p>6 futures account, in which case I would amend my</p> <p>7 testimony from this morning to say that this</p> <p>8 agreement does cover the futures account.</p> <p>9 The reason I didn't or I wasn't clear</p> <p>10 about that this morning is that we did not and</p> <p>11 were not aware as of the 19th that there were</p> <p>12 futures, at least to the best of my recollection.</p> <p>13 Q Are the futures, Mr. Raisler, that</p> <p>14 are cleared through the OCC, are those cleared</p> <p>15 differently to futures cleared through an</p> <p>16 organization like the CME?</p> <p>17 A No. They are cleared -- there is a</p> <p>18 division of the OCC that is recognized as a</p> <p>19 derivatives clearing organization that is</p> <p>20 permitted by the CFTC to execute clearing</p> <p>21 activities and clearing functions, and its</p> <p>22 responsibilities are identical to any other</p> <p>23 futures clearing house.</p> <p>24 It is important, though, not to</p> <p>25 confuse that activity with the clearing that OCC</p>	<p>1 Confidential - K. Raisler</p> <p>2 does for equity options, which is done through a</p> <p>3 different part of OCC. I mean it's certainly --</p> <p>4 on reflecting on my earlier comment, I apologize,</p> <p>5 it would certainly make sense that the transfer</p> <p>6 and assumption agreement would cover futures,</p> <p>7 because presumably it would cover everything, all</p> <p>8 of the obligations that may be at risk at the OCC.</p> <p>9 The reason I think -- I didn't think</p> <p>10 it -- the reason I testified that it may not have</p> <p>11 is just because I didn't know that there were any</p> <p>12 futures at the time this agreement was entered</p> <p>13 into.</p> <p>14 Q That is all I have for that document,</p> <p>15 sir.</p> <p>16 Mr. Raisler, do you recall any</p> <p>17 discussions with the CFTC as to the existence or</p> <p>18 otherwise of excess seg and secured funds in</p> <p>19 Lehman's accounts over and above the required</p> <p>20 minimums in those accounts?</p> <p>21 MS. BLOOMER: Object to -- actually,</p> <p>22 I object to the form of the question.</p> <p>23 MR. OXFORD: I won't object to the</p> <p>24 form of that objection.</p> <p>25 A There was never any discussion with</p>
Page 160	Page 161
<p>1 Confidential - K. Raisler</p> <p>2 the CFTC about that, that I recall.</p> <p>3 Q Were you the only person from</p> <p>4 Sullivan & Cromwell who was liaison with the CFTC</p> <p>5 or was Mr. Gilberg also involved?</p> <p>6 A Mr. Gilberg was also involved, and</p> <p>7 there could have been others as well, but I would</p> <p>8 have been aware of what the communications were,</p> <p>9 and I would be confident in saying it was never</p> <p>10 discussed.</p> <p>11 I should just caveat that answer by</p> <p>12 saying that the way in which you characterize what</p> <p>13 the account is and excess and words like that need</p> <p>14 to be qualified by the answers I have given in</p> <p>15 testimony I gave this morning about what that</p> <p>16 means.</p> <p>17 Q I understand.</p> <p>18 In your declaration, sir, you</p> <p>19 describe in paragraph three in the last sentence,</p> <p>20 that what you believe was the general</p> <p>21 understanding of all participants was in relation</p> <p>22 to what part of the LBI futures business was going</p> <p>23 to be transferred to Barclays.</p> <p>24 A Correct.</p> <p>25 MS. BLOOMER: I object to the form of</p>	<p>1 Confidential - K. Raisler</p> <p>2 that last question to the extent it was a</p> <p>3 question.</p> <p>4 MR. OXFORD: It was a question. I</p> <p>5 think I got a yes.</p> <p>6 MS. BLOOMER: I object to the form of</p> <p>7 the question, vague use of the term "what</p> <p>8 part of the business."</p> <p>9 BY MR. OXFORD:</p> <p>10 Q The people who were in your meetings,</p> <p>11 Mr. Raisler, the ones that you describe in your</p> <p>12 declaration, were not the people who were</p> <p>13 responsible for negotiating the business terms of</p> <p>14 this transaction between Lehman and Barclays</p> <p>15 insofar as it pertains to the futures business;</p> <p>16 correct?</p> <p>17 MS. BLOOMER: Object to the form.</p> <p>18 A That was my understanding, correct.</p> <p>19 Q Are you aware who, if anyone, on</p> <p>20 behalf of Lehman actually agreed to transfer the</p> <p>21 business, the futures business, as you describe in</p> <p>22 paragraph three of your declaration?</p> <p>23 A Not in name, no.</p> <p>24 Q In any other manner are you able to</p> <p>25 identify such a person for me?</p>

Page 162	Page 163
<p>1 Confidential - K. Raisler</p> <p>2 MS. BLOOMER: Objection to form.</p> <p>3 A I can't identify an individual. In</p> <p>4 that sense I don't know that I can help you out.</p> <p>5 Q Is there some other unit that is</p> <p>6 larger than an individual that you can identify</p> <p>7 for me who you believe agreed to the transaction</p> <p>8 that you described in the last sentence of</p> <p>9 paragraph three of your declaration?</p> <p>10 A Well, I mean to the extent that the</p> <p>11 team that I was working with was implementing a</p> <p>12 strategy to effectuate this proposal, it certainly</p> <p>13 was the assumption that Lehman, LBI, Inc., the</p> <p>14 trustee, people responsible were the ones who were</p> <p>15 going to allow us to do that. Otherwise, we were</p> <p>16 wasting a lot of time. That is how I came to that</p> <p>17 conclusion.</p> <p>18 Q But that conclusion is not based on a</p> <p>19 conversation with anybody who represents or had</p> <p>20 authority to negotiate on behalf of LBI, is it?</p> <p>21 MS. BLOOMER: Objection to form and</p> <p>22 foundation.</p> <p>23 A I don't think it -- it did not</p> <p>24 result -- it did not come from a conversation with</p> <p>25 anybody who had authority to negotiate for LBI.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q And has anyone identified to you,</p> <p>3 Mr. Raisler, just to close this line of</p> <p>4 questioning, whether the deal that you described,</p> <p>5 as your understanding based on what you say in</p> <p>6 paragraph three of your declaration, was actually</p> <p>7 agreed to by anybody on behalf of LP?</p> <p>8 MS. BLOOMER: Object to form of the</p> <p>9 question and instruct the witness --</p> <p>10 MR. OXFORD: Let's try that one a</p> <p>11 again.</p> <p>12 Q You told me that you don't have an</p> <p>13 understanding based on any conversation with</p> <p>14 anybody as to what the precise business terms of</p> <p>15 the deal were as agreed to by LBI; correct?</p> <p>16 MS. BLOOMER: Objection to the</p> <p>17 characterization of the testimony.</p> <p>18 A I am not sure that's what I would</p> <p>19 say. I think the best answer I can give you, at</p> <p>20 the risk of some repetition, is that there was a</p> <p>21 team of people at Barclays who spent the week</p> <p>22 meeting with people at LBI to implement a transfer</p> <p>23 of assets and interests consistent with paragraph</p> <p>24 three.</p> <p>25 Each of us were under the clear</p>
Page 164	Page 165
<p>1 Confidential - K. Raisler</p> <p>2 understanding, impression, whatever other word you</p> <p>3 want to use, that this was the deal that LBI was</p> <p>4 proposing to enter into with Barclays. It was not</p> <p>5 as a result of a conversation with anybody</p> <p>6 negotiating that deal, but the word from on high</p> <p>7 came down, and this is what the people in the</p> <p>8 trenches were doing. And I was there in the</p> <p>9 trenches.</p> <p>10 Q I understand, thank you. I think I</p> <p>11 have your testimony on that.</p> <p>12 A Right.</p> <p>13 Q Did you have any discussions with</p> <p>14 anyone, Mr. Raisler, at any time about the need</p> <p>15 for an accounting as to -- withdrawn.</p> <p>16 Did you have any discussion with</p> <p>17 anyone at any time, Mr. Raisler, about whether</p> <p>18 Barclays needed to keep track of any customer seg</p> <p>19 and secured funds for monies in those accounts</p> <p>20 that belonged to LBI?</p> <p>21 MS. BLOOMER: Object to the form of</p> <p>22 the question, and an instruction not to</p> <p>23 answer to the extent it requires you to</p> <p>24 disclose the communications you have had</p> <p>25 with Barclays.</p>	<p>1 Confidential - K. Raisler</p> <p>2 A I confess I lost that question</p> <p>3 somewhere in the middle.</p> <p>4 Q I think the question might have too.</p> <p>5 Let me try it this way: You had</p> <p>6 discussions, Mr. Raisler, that you testified to</p> <p>7 earlier on about the difficulties in transferring</p> <p>8 the customer segregated and secured funds to</p> <p>9 Barclays; correct?</p> <p>10 A That is correct, yes.</p> <p>11 Q I believe you also testified that you</p> <p>12 believed there were monies in those segregated and</p> <p>13 secured accounts that exceeded the obligations to</p> <p>14 customers that Barclays would be taking</p> <p>15 responsibility for?</p> <p>16 MS. BLOOMER: Objection,</p> <p>17 mischaracterizes the testimony.</p> <p>18 A I'm struggling a little bit with</p> <p>19 words likely "responsibility for." If I can</p> <p>20 potentially clarify.</p> <p>21 Q Please.</p> <p>22 A It was my understanding that all of</p> <p>23 those funds were both domestically and to the</p> <p>24 extent there were funds outside of the U.S., were</p> <p>25 to come over to Barclays. That was my</p>

Page 166	Page 167
<p>1 Confidential - K. Raisler</p> <p>2 understanding of the transaction.</p> <p>3 Q And was it also your understanding of</p> <p>4 the transaction that all of those funds would come</p> <p>5 over to Barclays even if there was -- there were</p> <p>6 more customer seg and secured funds than were --</p> <p>7 there were obligations to customers that Barclays</p> <p>8 was taking responsibility for?</p> <p>9 A Yes.</p> <p>10 Q That is the buffer that we talked</p> <p>11 about earlier; correct?</p> <p>12 MS. BLOOMER: Objection to form.</p> <p>13 A It could be a variety of things, one</p> <p>14 of which I guess could be something like a buffer,</p> <p>15 but the point I would make is that as we looked at</p> <p>16 the transaction, in the week of September 15th,</p> <p>17 all of those assets that were in segregated and</p> <p>18 secured accounts were to be transferred to</p> <p>19 Barclays along with all of the positions that were</p> <p>20 represented in those various accounts; in</p> <p>21 addition, the proprietary positions and the assets</p> <p>22 that were supporting those proprietary positions.</p> <p>23 That was my understanding.</p> <p>24 Q Did you ever have any discussions</p> <p>25 with anyone, including the trustee's office, about</p>	<p>1 Confidential - K. Raisler</p> <p>2 whether any part of the customer seg and secured</p> <p>3 funds might be returned to the LBI estate?</p> <p>4 A Absolutely not.</p> <p>5 Q Did you ever consider whether or not,</p> <p>6 independent of any conversations you had with the</p> <p>7 trustee or anyone representing the trustee, that</p> <p>8 there might be a need for any part of the customer</p> <p>9 segregated and secured amount funds to be returned</p> <p>10 to the LBI estate?</p> <p>11 MS. BLOOMER: Objection to form.</p> <p>12 A I sorry. I am not sure that is a</p> <p>13 different question from the last one.</p> <p>14 MR. LACY: He's asking about your</p> <p>15 understanding instead of your conversations.</p> <p>16</p> <p>17 Q Rob is right.</p> <p>18 A Okay. No, I did not.</p> <p>19 (Exhibit 662-A marked for</p> <p>20 identification as of this date.)</p> <p>21</p> <p>22 Q I am handing you, Mr. Raisler, a</p> <p>23 document that has been marked as Exhibit 662.</p> <p>24 MR. LACY: 662-A, I hope.</p> <p>25 MR. OXFORD: You are keeping me</p>
Page 168	Page 169
<p>1 Confidential - K. Raisler</p> <p>2 honest today.</p> <p>3 MS. BLOOMER: I'm going to object.</p> <p>4 We might have to call this document back,</p> <p>5 Neil. It appears that it contains contents</p> <p>6 of communications between Barclays and its</p> <p>7 lawyers. So, I would like a little bit of a</p> <p>8 break to consider this before we go into</p> <p>9 questions about it.</p> <p>10 MR. OXFORD: Okay. Do you want to</p> <p>11 take five minutes?</p> <p>12 MS. BLOOMER: Yes, please.</p> <p>13 (Recess taken.)</p> <p>14 MR. OXFORD: Ready to go back on?</p> <p>15 MS. BLOOMER: For the record,</p> <p>16 Barclays inadvertently produced a privileged</p> <p>17 document, Bates number BCIEXS 00116806</p> <p>18 through 07. And we are going to be formally</p> <p>19 exercising our clawback rights under the</p> <p>20 established process after the deposition,</p> <p>21 but effective immediately, would ask that no</p> <p>22 further reference be made to the document by</p> <p>23 the other side or any other adverse party.</p> <p>24 MR. OXFORD: That is fine, Trish. We</p> <p>25 will review your request when we receive it,</p>	<p>1 Confidential - K. Raisler</p> <p>2 and I won't make any further reference to</p> <p>3 that document in this deposition.</p> <p>4 Q Mr. Raisler, independent of the</p> <p>5 document that I had marked as 662-A, I just want</p> <p>6 to make sure that I have your testimony that you</p> <p>7 never considered -- withdrawn.</p> <p>8 I just want to make sure that</p> <p>9 independent of 662-A, I have your testimony as to</p> <p>10 whether or not you ever considered that there be a</p> <p>11 need for an accounting or the possible return of</p> <p>12 some portion of the customer segregated and</p> <p>13 secured funds that were transferred to Barclays as</p> <p>14 part of Lehman's futures business.</p> <p>15 MR. LACY: I'm sorry, hold on a</p> <p>16 second.</p> <p>17 I take it you mean a return to the</p> <p>18 estate, not to a customer.</p> <p>19 MR. OXFORD: Yes.</p> <p>20 MR. LACY: Okay.</p> <p>21 A As I previously testified, I was not</p> <p>22 aware of any consideration being given to</p> <p>23 returning any of those funds, which were part of</p> <p>24 the transaction and part of the transfer, as I</p> <p>25 understood it.</p>

Page 170	Page 171
<p>1 Confidential - K. Raisler 2 MR. OXFORD: Can we go off for a 3 second. 4 (Discussion held off the record.) 5 MR. LACY: Back on the record. 6 Mr. Oxford has shown me a document 7 that was produced by Sullivan & Cromwell in 8 response to a subpoena in this case, number 9 SC 3897 through 3905. 10 The top half of the first page of 11 this is privileged. It was produced 12 inadvertently, pursuant to, I think it's the 13 protective order and provision concerning 14 the inadvertent disclosure, we request the 15 return of the top half of the first page of 16 this document. 17 No privilege is claimed with respect 18 to the bottom two e-mails or to the 19 attachment, so if you want to go ahead and 20 ask about the attachment, feel free to go 21 ahead and ask about the attachment. 22 MR. OXFORD: You are claiming 23 privilege on the most interesting part of 24 the e-mail, so I will hold my questions for 25 now. Thank you.</p>	<p>1 Confidential - K. Raisler 2 BY MR. OXFORD: 3 Q Just going back to the last question 4 and answer before we broke, Mr. Raisler, I 5 realized in reviewing the record I asked a 6 compound question, so I want to break it up. 7 Did you ever consider the need for an 8 accounting with respect to Barclays' acquisition 9 of Lehman's customer segregated and secured 10 accounts? 11 MS. BLOOMER: I object to the form of 12 the question, the undefined vague use of the 13 term "accounting." 14 A I am not sure what is meant by the 15 term "accounting," although I am inclined to think 16 that I didn't. 17 Q In my question I mean that the 18 contents of the customer segregated and secured 19 accounts had to be tracked in case there was a 20 need to return any of those customer segregated 21 and secured funds to the Lehman estate. 22 A No. 23 MS. BLOOMER: Objection to form, I 24 think. 25 (Exhibit 663-A marked for</p>
Page 172	Page 173
<p>1 Confidential - K. Raisler 2 identification as of this date.) 3 Q Mr. Raisler, I am handing you what I 4 have marked as Exhibit 663-A, which I will 5 identify for the record as an e-mail with the 6 Bates number SC 00003451 and an attachment that 7 goes through 3453. 8 If you could take a moment to review 9 that and tell me if you have seen it before. 10 A Yes, I am familiar with this. 11 Q How is it you are familiar with it, 12 sir? 13 A This was part of a discussion that I 14 was involved in with the OCC that actually dates 15 all the way back to the transfer and assumption 16 agreement as OC -- as Barclay's was trying to 17 recover assets owed to it pursuant to the terms of 18 that agreement. 19 Q Did Barclays, to your knowledge, ask 20 the OCC to write this letter? 21 A My best recollection is they, they 22 proposed to write it. We were in discussions with 23 them as they were trying to figure out what to do 24 with these assets, and they were sort of advancing 25 this in the interest of sorting that out.</p>	<p>1 Confidential - K. Raisler 2 Q Did you discuss this request with JPM 3 Chase at any time, sir? 4 A I believe there were some discussions 5 with JPMC during the course of this. 6 Q Were there discussions with JPM Chase 7 themselves or counsel for Chase? 8 A I'm sure it would have been counsel. 9 I don't know whether it would have been inside 10 counsel or outside counsel. 11 Q And did you comment on this letter 12 before it was sent, sir? 13 MS. BLOOMER: Objection. Before it 14 was sent to whom? 15 MR. OXFORD: That's a good objection, 16 Trish. Thank you. 17 Q Did you -- let me try it this way: 18 Did you see a draft of this letter prior to the 19 November 4th draft that appears to be sent to you 20 by Jim McDaniel on the 6th of November? 21 A I believe so. I don't recall 22 precisely, but I believe so. 23 Q Do you believe that draft was sent to 24 you by Mr. McDaniel? 25 A Yes. I'm sorry to be -- the word</p>

Page 174	Page 175
<p>1 Confidential - K. Raisler</p> <p>2 "that" in that question referring to the earlier</p> <p>3 draft?</p> <p>4 Q The earlier draft, yes.</p> <p>5 A Yes.</p> <p>6 Q Did you provide comments on the</p> <p>7 earlier draft provided by Mr. McDaniel?</p> <p>8 A I don't have a precise recollection,</p> <p>9 but I might have been the one who referred him to</p> <p>10 JPMC to make sure that their thoughts and</p> <p>11 considerations were taken into account.</p> <p>12 Q Did you provide Mr. McDaniel comments</p> <p>13 on the draft that is attached to the e-mail that</p> <p>14 we are looking at, 663-A?</p> <p>15 A I don't believe so. I think that</p> <p>16 this -- to my best recollection, this form looks</p> <p>17 pretty final to me.</p> <p>18 Q That is all I have for that.</p> <p>19 I make no promises, but this may be</p> <p>20 my last document. I think it is.</p> <p>21 A Okay.</p> <p>22 (Exhibit 664-A marked for</p> <p>23 identification as of this date.)</p> <p>24 Q Mr. Raisler, I have handed you a</p> <p>25 document that I have marked as 664-A, which is a</p>	<p>1 Confidential - K. Raisler</p> <p>2 Friday the 19th, 3 p.m. e-mail, with the subject</p> <p>3 "Domestic and Foreign Calculations," and two</p> <p>4 attachments.</p> <p>5 If you could take just a moment and</p> <p>6 review it and let me know whether you have seen</p> <p>7 the e-mail or the attachments before.</p> <p>8 A I don't believe that I have seen this</p> <p>9 before. Or at least I don't recall seeing it</p> <p>10 before.</p> <p>11 Q Are you able to tell, just from your</p> <p>12 review of the documents -- I understand that you</p> <p>13 don't, sitting here today, think you have seen</p> <p>14 this before. You don't recall seeing it before.</p> <p>15 Are you able to tell me what the two</p> <p>16 attachments are?</p> <p>17 MR. LACY: Object for lack of</p> <p>18 foundation.</p> <p>19 A I am not familiar with this form of</p> <p>20 document. Obviously I could read the subject line</p> <p>21 and tell you what the subject line says, but as</p> <p>22 far as how the math works or anything like that, I</p> <p>23 can't, I can't be helpful.</p> <p>24 In fact, I can't -- on the second</p> <p>25 document, I can't make the math work, so I am not</p>
Page 176	Page 177
<p>1 Confidential - K. Raisler</p> <p>2 really sure I follow it.</p> <p>3 Q You testified before lunch, sir,</p> <p>4 about the interests that certain exchanges and</p> <p>5 clearing organizations have in segregated and</p> <p>6 secured accounts. Do you remember that testimony?</p> <p>7 A Yes, I think it was sort of muddled,</p> <p>8 but yes.</p> <p>9 Q If it were muddled, I am not sure it</p> <p>10 was the fault of the witness, rather it's the</p> <p>11 questioner.</p> <p>12 Is it your understanding, sir, that</p> <p>13 an organization such as the CME would have a lien</p> <p>14 over all assets in Lehman's, that is LBI's</p> <p>15 segregated customer bank account?</p> <p>16 MR. LACY: Object to the form of the</p> <p>17 question.</p> <p>18 A There would be a form of a lien that</p> <p>19 the CME clearing house would have. It doesn't</p> <p>20 really accord very well with the traditional UCC</p> <p>21 security interest type concept. So I think it can</p> <p>22 be confusing.</p> <p>23 But the CME would say that to the</p> <p>24 extent that the customer or house accounts</p> <p>25 respectively of any clearing member of the</p>	<p>1 Confidential - K. Raisler</p> <p>2 exchange are needed to meet the obligations of</p> <p>3 those respective accounts, they would have a call</p> <p>4 on those assets for that purpose, and they would</p> <p>5 have the ability, as we discussed this morning, to</p> <p>6 reach into a segregated account even at a non-CME</p> <p>7 clearing house bank location to use those funds to</p> <p>8 meet margin calls.</p> <p>9 So in that sense, I think it probably</p> <p>10 would be equivalent to, although they don't</p> <p>11 usually use the term "lien."</p> <p>12 MS. BLOOMER: Neil, I don't mean to</p> <p>13 interrupt your questioning, but do you know</p> <p>14 whose document this is? I mean I don't know</p> <p>15 who the sender is, and I don't see any Bates</p> <p>16 number on it. I am just wondering who --</p> <p>17 whose document this is. Is it an LBI</p> <p>18 document? Is it a trustee document?</p> <p>19 MR. OXFORD: I think it was created</p> <p>20 on Friday afternoon, September 19th, prior</p> <p>21 to the appointment of the SIPA trustee.</p> <p>22 MS. BLOOMER: Okay. So it's not a</p> <p>23 trustee document.</p> <p>24 MR. OXFORD: It's not created by the</p> <p>25 trustee.</p>

Page 178	Page 179
<p>1 Confidential - K. Raisler</p> <p>2 MS. BLOOMER: Do you know who Bianca</p> <p>3 Castedo is?</p> <p>4 MR. OXFORD: Yes, I believe she was</p> <p>5 formerly employed by Lehman, and I believe</p> <p>6 she is currently employed by your client.</p> <p>7 MS. BLOOMER: Okay. Thank you.</p> <p>8 This document hasn't been produced by</p> <p>9 anyone at all in the litigation, I take it.</p> <p>10 MR. OXFORD: Not to my knowledge.</p> <p>11 Mr. Raisler, I don't think I have any</p> <p>12 further questions for you at this time. I</p> <p>13 don't know if counsel for any other party</p> <p>14 does.</p> <p>15 MS. CRAWFORD: The debtor doesn't.</p> <p>16 MR. KAY: No questions from the</p> <p>17 committee.</p> <p>18 EXAMINATION</p> <p>19 BY MR. LACY:</p> <p>20 Q Mr. Raisler, you testified early this</p> <p>21 morning about some uncertainty created by the fact</p> <p>22 that the customer positions at a clearing house</p> <p>23 are aggregated.</p> <p>24 Do you remember that.</p> <p>25 A Yes, I do.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q Was there a -- as part of this due</p> <p>3 diligence that went on during the week of the</p> <p>4 15th, was there a similar issue relating to the</p> <p>5 house accounts?</p> <p>6 A Yes. As I indicated this morning, at</p> <p>7 the exchange level, they would have positions, and</p> <p>8 they would have positions aggregated for all</p> <p>9 customers in a single customer account. In</p> <p>10 addition, the proprietary positions would be</p> <p>11 aggregated so that you won't know which positions</p> <p>12 are LBI's, which positions are LBI's affiliates',</p> <p>13 and which positions are the positions of customers</p> <p>14 at LBI's affiliates, all of which would be</p> <p>15 indicated on the proprietary -- in the proprietary</p> <p>16 account at the clearing house.</p> <p>17 So, while you could get certain</p> <p>18 information from the clearing house, because of</p> <p>19 its aggregate nature, you wouldn't be able to</p> <p>20 distill out exactly where the exposures were and</p> <p>21 whose responsibilities they were.</p> <p>22 Q And you also mentioned that Barclays</p> <p>23 first learned of the VIX position on the morning</p> <p>24 of the 21st, Saturday the 21st.</p> <p>25 A I think Saturday was the 20th.</p>
Page 180	Page 181
<p>1 Confidential - K. Raisler</p> <p>2 Q Saturday the 20th?</p> <p>3 A Yes.</p> <p>4 Q Do you remember that?</p> <p>5 A Yes.</p> <p>6 Q What was the significance of that?</p> <p>7 A I think the significance of that is a</p> <p>8 couple-fold. It sort of highlights the</p> <p>9 uncertainty around the disclosures, and it</p> <p>10 emphasizes some of the points I make in my</p> <p>11 declaration about not knowing exactly what was</p> <p>12 going on except at the highest levels.</p> <p>13 The VIX position, which was a</p> <p>14 significant position, was not discovered, as I</p> <p>15 recall, until Saturday, and the problem with the</p> <p>16 VIX position is that it's a problem with</p> <p>17 volatility, and at the time volatility was at</p> <p>18 record levels, and it was a substantial position.</p> <p>19 My recollection is it was a substantial portion of</p> <p>20 the open interest on the exchange, in the</p> <p>21 neighborhood of 30 percent, so that liquidating</p> <p>22 the position would not have been easy, nor would</p> <p>23 it have been easy to hedge the position.</p> <p>24 I recall some discussions about that,</p> <p>25 that it would have -- it would take up to two or</p>	<p>1 Confidential - K. Raisler</p> <p>2 even three weeks to actually unload that position</p> <p>3 or to risk manage it, and so it was an example</p> <p>4 where the amount of margin that had been called</p> <p>5 for by the OCC for that position is -- was pretty</p> <p>6 obviously in Barclays' eyes insufficient to marry</p> <p>7 up with the exposure that that position had, if it</p> <p>8 was going to take two to three weeks to liquidate.</p> <p>9 I think it just emphasizes the levels</p> <p>10 of uncertainty about positions and exposures that</p> <p>11 were on the books as Barclays was trying to make</p> <p>12 these decisions.</p> <p>13 MR. LACY: I have no further</p> <p>14 questions.</p> <p>15 MS. BLOOMER: I don't have any</p> <p>16 questions.</p> <p>17 MR. OXFORD: I have got some</p> <p>18 follow-up on those questions and answers.</p> <p>19 FURTHER EXAMINATION</p> <p>20 BY MR. OXFORD:</p> <p>21 Q Starting at the end, Mr. Raisler, you</p> <p>22 just testified that in Barclays' view the margin</p> <p>23 at the OCC was not adequate -- I'm sorry, was not</p> <p>24 insufficient to cover the exposure that the</p> <p>25 position had if it was going to take two to weeks</p>

Page 182	Page 183
<p>1 Confidential - K. Raisler</p> <p>2 to liquidate?</p> <p>3 A Correct.</p> <p>4 MR. LACY: I think you misspoke.</p> <p>5 A Sufficient, not insufficient; right?</p> <p>6 Q Let's go back for one second.</p> <p>7 Is it your testimony, sir, that the</p> <p>8 margin that Lehman had posted at the OCC in</p> <p>9 respect of the VIX positions was insufficient in</p> <p>10 Barclays' eyes?</p> <p>11 A That is correct.</p> <p>12 Q And that is based upon a conversation</p> <p>13 with Barclays; is that correct?</p> <p>14 A That's correct.</p> <p>15 MS. BLOOMER: I'm going to object and</p> <p>16 instruct the witness not to disclose the</p> <p>17 substance of communications with Barclay</p> <p>18 that were not had in the presence of third</p> <p>19 parties such as Lehman.</p> <p>20 A I think some of these conversations,</p> <p>21 and I will try to remember as best I can, some of</p> <p>22 them were within the presence of Lehman and some</p> <p>23 were not.</p> <p>24 MS. BLOOMER: Okay. So please stick</p> <p>25 to the ones that were in the presence of</p>	<p>1 Confidential - K. Raisler</p> <p>2 Lehman.</p> <p>3 Q Was the basis of the testimony that</p> <p>4 you gave in response to your partner's questions,</p> <p>5 was that a conversation that you had in the</p> <p>6 presence of Lehman or was it not?</p> <p>7 MS. BLOOMER: I'm going to object to</p> <p>8 the extent that requires you to disclose the</p> <p>9 ones that you had in the presence of only</p> <p>10 Barclays.</p> <p>11 A My recollection is that it was a</p> <p>12 conversation that was had in the presence of</p> <p>13 Lehman as we were trying to figure out what the</p> <p>14 exposure was of this position.</p> <p>15 Q Okay. Who at Lehman's, sir?</p> <p>16 A Again, the same vagueness that I had</p> <p>17 from this morning, but I would have assumed it</p> <p>18 would be Jeff Jennings and Ron Filler, but I would</p> <p>19 not be certain about that, and obviously others.</p> <p>20 Q Do you remember anyone advising you</p> <p>21 that there was excess margin of approximately</p> <p>22 \$28 million in connection with the VIX positions?</p> <p>23 MS. BLOOMER: Objection, vague as to</p> <p>24 time frame.</p> <p>25 Q Prior to the closing of the</p>
Page 184	Page 185
<p>1 Confidential - K. Raisler</p> <p>2 transaction, sir, on the 22nd.</p> <p>3 A I recall that there was some</p> <p>4 discussion about the size of the margin and the --</p> <p>5 a clear conclusion after discussion with Lehman</p> <p>6 that the margin was significantly inadequate.</p> <p>7 Q Significantly inadequate for what</p> <p>8 purpose, sir?</p> <p>9 A The risk of the position in the view</p> <p>10 of Barclays, as we discussed it with Lehman, was</p> <p>11 that this was an illiquid position in an extremely</p> <p>12 volatile market, and it was a volatility index</p> <p>13 that therefore had potential enormous swings to</p> <p>14 it, and as a result, the margin that was being</p> <p>15 required made assumptions about liquidity and</p> <p>16 market moves that we thought were too</p> <p>17 conservative, and therefore, the margin that was</p> <p>18 already up at the clearing house was not by orders</p> <p>19 of magnitude sufficient.</p> <p>20 Q And who calculated the required</p> <p>21 margin at the clearing house, sir? Was that the</p> <p>22 OCC?</p> <p>23 A The OCC would have been the</p> <p>24 calculator of that, yes.</p> <p>25 Q And it's your testimony that the</p>	<p>1 Confidential - K. Raisler</p> <p>2 OCC's requirement for the margins on the VIX</p> <p>3 positions was unduly conservative -- withdrawn.</p> <p>4 It's your testimony, sir, that the</p> <p>5 margin that the OCC required Lehman at the time,</p> <p>6 prior to the close of the transaction, to post in</p> <p>7 respect of those VIX positions at the OCC was</p> <p>8 inadequate to cover Lehman's and in turn Barclays'</p> <p>9 long-term exposure to those positions?</p> <p>10 A I think the way I would characterize</p> <p>11 it is that there was a significant risk that the</p> <p>12 margin that had been posted would be insufficient,</p> <p>13 and in that sense it was too conservative from a</p> <p>14 risk-taking standpoint for the futures team to</p> <p>15 take over that position with that small amount of</p> <p>16 collateral.</p> <p>17 Q Was the risk that Barclays was</p> <p>18 concerned about, sir, was that a risk of market</p> <p>19 movement post closing?</p> <p>20 A Well, it would be a risk of -- since</p> <p>21 we had guaranteed the OCC's position as of Friday</p> <p>22 for Monday's close, as of Friday the 19th, it</p> <p>23 would be a risk that would be in front of us at</p> <p>24 the time that we discovered it on the 20th,</p> <p>25 because it was already in effect as of the prior</p>

Page 186	Page 187
<p>1 Confidential - K. Raisler</p> <p>2 day, the 19th.</p> <p>3 Q Okay. Let's go back to the guarantee</p> <p>4 on the 19th. Please tell me everything you</p> <p>5 remember about Barclays' guaranteeing Lehman's</p> <p>6 obligations to the OCC with effect from the 19th</p> <p>7 of September, 2008.</p> <p>8 MS. BLOOMER: Objection, asked and</p> <p>9 answered.</p> <p>10 A I think simplistically the agreement</p> <p>11 provides that we were pledging to OCC that any of</p> <p>12 the obligations that occurred from the time of the</p> <p>13 agreement forward would be obligations to be met</p> <p>14 by Barclays.</p> <p>15 Q And when you say the agreement, sir,</p> <p>16 what agreement are you referring to?</p> <p>17 A The transfer and assumption</p> <p>18 agreement.</p> <p>19 Q When did Barclays sign the transfer</p> <p>20 and assumption agreement, sir?</p> <p>21 A I understood it was sometime on the</p> <p>22 19th.</p> <p>23 Q If I were to represent to you that</p> <p>24 Barclays did not in fact sign that until a matter</p> <p>25 of hours before the closing at around 8 a.m. on</p>	<p>1 Confidential - K. Raisler</p> <p>2 September 22nd, 2008, would that change your</p> <p>3 testimony?</p> <p>4 A No, because it was effective as of</p> <p>5 the 19th, as I understood it, regardless of when</p> <p>6 it was signed.</p> <p>7 Q Because Barclays had agreed to this</p> <p>8 in principle?</p> <p>9 A And ultimately when it was -- I guess</p> <p>10 you could raise an interesting intellectual</p> <p>11 question if Barclays had decided to walk away from</p> <p>12 the agreement at that point, what would have</p> <p>13 happened. I believe that the agreement when they</p> <p>14 entered into it was intended to be effective as of</p> <p>15 the 19th, and that was a pledge and representation</p> <p>16 that had been made in order to satisfy the OCC,</p> <p>17 not to take any actions with respect to these</p> <p>18 positions.</p> <p>19 Q Who made that representation that the</p> <p>20 transfer and assumption agreement -- withdrawn.</p> <p>21 What is the basis of your testimony,</p> <p>22 sir, that Barclays had agreed in principle to the</p> <p>23 transfer and assumption agreement with effect from</p> <p>24 some point on Friday, the 19th of September, 2008?</p> <p>25 MS. BLOOMER: Objection, I think it</p>
Page 188	Page 189
<p>1 Confidential - K. Raisler</p> <p>2 may mischaracterize the witness' testimony.</p> <p>3 He can clarify it.</p> <p>4 A The agreement itself says it's</p> <p>5 effective as of September 19th close of business.</p> <p>6 In the discussions that we had on the 18th and the</p> <p>7 19th, that I had with OCC, it was clear to me that</p> <p>8 Barclays was stepping up, as it did with the CME,</p> <p>9 to take responsibility for what occurred over the</p> <p>10 weekend.</p> <p>11 I also understood from direct</p> <p>12 conversations with the OCC, that their insecurity</p> <p>13 required this type of action as of the 19th, so</p> <p>14 all of those combined to lead me to that</p> <p>15 conclusion.</p> <p>16 Q Did anybody at Barclays or acting on</p> <p>17 behalf of Barclays tell you that with effect from</p> <p>18 Friday the 19th, they had agreed to the TAA?</p> <p>19 MS. BLOOMER: Object to the form of</p> <p>20 the question, and I instruct the witness not</p> <p>21 to disclose the contents of privileged</p> <p>22 communications with Barclays.</p> <p>23 A I think that to the extent there were</p> <p>24 such conversation, they would be governed by the</p> <p>25 privilege that my counsel has highlighted.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q Other than a privileged conversation,</p> <p>3 sir, you are unable to tell me what the basis is</p> <p>4 of your testimony that you believe Barclays agreed</p> <p>5 to the TAA Friday, the 19th?</p> <p>6 MS. BLOOMER: Objection. You are</p> <p>7 characterizing what he said. He didn't say</p> <p>8 that Barclays agreed to the TAA. He had a</p> <p>9 discussion about something that was not</p> <p>10 necessarily the exact same thing as the TAA,</p> <p>11 Neil. You have to separate the two, I</p> <p>12 think, to get a clear record.</p> <p>13 A Let me try to clarify, I think.</p> <p>14 Q Sure.</p> <p>15 A Which is sort of my answer earlier,</p> <p>16 which is as a result of my conversations with the</p> <p>17 OCC, as a result of my understanding of their</p> <p>18 insecurities, and as a result of a demand which</p> <p>19 they had made, which I had communicated back to</p> <p>20 Barclays, all of those led me to understand that</p> <p>21 Barclays had represented to the OCC that effective</p> <p>22 the close on the 19th, that it was going to stand</p> <p>23 by all of the obligations of LBI to OCC effective</p> <p>24 the close of business the 19th?</p> <p>25 Q Okay. I think that is helpful, thank</p>

Page 190	Page 191
<p>1 Confidential - K. Raisler</p> <p>2 you. Let me just zoom in on the last part of your</p> <p>3 answer there, sir.</p> <p>4 And you said you understood that</p> <p>5 Barclays had represented to OCC that effective the</p> <p>6 close of the 19th, it was going to stand by all of</p> <p>7 the obligations of LBI to OCC effective the close</p> <p>8 of the 19th. When did Barclays make that</p> <p>9 representation to the OCC, to your knowledge?</p> <p>10 A Okay. What I was trying to describe</p> <p>11 was the data points that I had that led me to that</p> <p>12 conclusion. I don't know when that was done. I</p> <p>13 don't actually know if it was done, I don't know</p> <p>14 who did it.</p> <p>15 But all of the circumstances around</p> <p>16 my activities and the comfort level that I got</p> <p>17 from OCC at the end of the day on Friday, the</p> <p>18 19th, led me to conclude that such a</p> <p>19 representation almost certainly had to have been</p> <p>20 made.</p> <p>21 Q But you don't know whether or not</p> <p>22 such a representation was in fact made because you</p> <p>23 don't have any direct knowledge, it's an</p> <p>24 inference, sir?</p> <p>25 A No, no. I think we tried to separate</p>	<p>1 Confidential - K. Raisler</p> <p>2 this part of the discussion from what I may have</p> <p>3 obtained through the attorney-client privilege.</p> <p>4 Q All right. So, I see what you are</p> <p>5 saying. So, other than what you may have obtained</p> <p>6 through the attorney-client privilege, you are</p> <p>7 unable to identify what representation, if any,</p> <p>8 was made by Barclays to the OCC as of the 19th of</p> <p>9 September?</p> <p>10 MR. LACY: I am going -- on the --</p> <p>11 Q As of and on the 19th of September,</p> <p>12 2008.</p> <p>13 MR. LACY: The agreement itself is as</p> <p>14 of the 19th.</p> <p>15 A I think I have to rely on what I said</p> <p>16 in answering the prior questions, yes.</p> <p>17 Q When you said, Mr. Raisler, that</p> <p>18 Barclays had told you it considered the margin</p> <p>19 that was posted at the OCC in respect of the VIX</p> <p>20 positions we discussed was inadequate, who told</p> <p>21 you it was inadequate?</p> <p>22 MS. BLOOMER: I'm going to object.</p> <p>23 And please, to the extent -- please.</p> <p>24 Only disclose the communications that</p> <p>25 you had in the presence of LBI or a third</p>
Page 192	Page 193
<p>1 Confidential - K. Raisler</p> <p>2 party.</p> <p>3 I'm sorry, is there a concern with</p> <p>4 that objection, Neil?</p> <p>5 MR. OXFORD: No.</p> <p>6 MS. BLOOMER: Okay. Thank you.</p> <p>7 A I am reasonably certain it would have</p> <p>8 been Tim Stack.</p> <p>9 Q Was anyone else present for that</p> <p>10 discussion with Mr. Stack?</p> <p>11 A We had a series of discussions, some</p> <p>12 of which would be privileged, but some of which</p> <p>13 would have also included, I believe, Jeff Jennings</p> <p>14 and/or Ron Filler at Lehman as we were trying to</p> <p>15 get to the bottom of the VIX exposure.</p> <p>16 Q And Mr. Stack told you what exactly</p> <p>17 with respect to the inadequacy of the margin to</p> <p>18 cover the risk to Barclays?</p> <p>19 MS. BLOOMER: Same objection.</p> <p>20 A Beyond the high-level articulation I</p> <p>21 have given you, I am not confident that the more</p> <p>22 detailed conversations occurred in the presence of</p> <p>23 Lehman rather than just with Mr. Stack alone or</p> <p>24 with the team at Barclays alone.</p> <p>25 Q Did you have any discussions with</p>	<p>1 Confidential - K. Raisler</p> <p>2 anybody about the need for Barclays to have margin</p> <p>3 over and above the OCC's minimum requirements in</p> <p>4 order to protect Barclays against the future</p> <p>5 market risk of movements of Lehman positions at</p> <p>6 the OCC for which they were assuming</p> <p>7 responsibility?</p> <p>8 MS. BLOOMER: Same objection.</p> <p>9 A I think the discussions that we had,</p> <p>10 that I had with the OCC on the 18th and the 19th,</p> <p>11 highlighted that point from the OCC's perspective.</p> <p>12 I know that concern was shared by Barclays as a</p> <p>13 result of the meeting that we had during the week</p> <p>14 of the 15th.</p> <p>15 Q Do you have any other information</p> <p>16 that answers my last question?</p> <p>17 I am happy to have it read back.</p> <p>18 Would you like it read back?</p> <p>19 A That's okay.</p> <p>20 MS. BLOOMER: Again, the same</p> <p>21 objection.</p> <p>22 A No more detail that doesn't implicate</p> <p>23 the attorney-client privilege.</p> <p>24 Q Mr. Lacy asked you some questions</p> <p>25 about the aggregation of proprietary positions.</p>

Page 194	Page 195
<p>1 Confidential - K. Raisler</p> <p>2 Do you remember that testimony?</p> <p>3 A Yes, I do.</p> <p>4 Q At which exchange or clearing</p> <p>5 organization were proprietary positions</p> <p>6 aggregated, sir?</p> <p>7 A Basically all of them in the U.S.,</p> <p>8 and actually, I didn't discuss this in my</p> <p>9 testimony earlier, but in exchanges around the</p> <p>10 world, there is a commingling of customer and</p> <p>11 proprietary in a single account in most</p> <p>12 jurisdictions, certainly in the -- in Eurex and</p> <p>13 Germany and a number of Asian exchanges.</p> <p>14 Specifically in the U.S., there would</p> <p>15 be a single proprietary account, as there would be</p> <p>16 a single customer account, and the proprietary</p> <p>17 account would include the positions of, in this</p> <p>18 situation, LBI, but also LBI's affiliates and the</p> <p>19 customers of LBI's affiliates. All of them would</p> <p>20 be aggregated in a proprietary account.</p> <p>21 Q Why would the customers of LBI</p> <p>22 affiliates be aggregated in the proprietary</p> <p>23 account?</p> <p>24 A Because under the foreign</p> <p>25 jurisdictions from which those accounts would</p>	<p>1 Confidential - K. Raisler</p> <p>2 come, because we are talking about non-U.S.</p> <p>3 affiliates of LBI, the -- those jurisdictions that</p> <p>4 I just indicated don't distinguish between</p> <p>5 customer and proprietary, so at the futures broker</p> <p>6 level, let us say an LBIE level, they would have a</p> <p>7 single account, and it would commingle proprietary</p> <p>8 and customer.</p> <p>9 So when it delivers the position to</p> <p>10 LBI, LBI would know an account of LBIE or LBSF or</p> <p>11 some other LBI entity. It wouldn't know how much</p> <p>12 of that account was proprietary to that affiliate</p> <p>13 and how much of it represented customer positions</p> <p>14 of that foreign affiliate.</p> <p>15 Q We covered this next series of</p> <p>16 questions a little earlier, but I want to make</p> <p>17 sure I understand what you know about this issue,</p> <p>18 Mr. Raisler.</p> <p>19 To your understanding of the business</p> <p>20 deal, sir, how were the accounts of LBI affiliates</p> <p>21 being treated in the transfer of the futures</p> <p>22 business from Lehman to Barclays?</p> <p>23 MS. BLOOMER: Objection to form.</p> <p>24 A They would be treated -- let me be</p> <p>25 sure I have this right. I am not sure I knew then</p>
Page 196	Page 197
<p>1 Confidential - K. Raisler</p> <p>2 and I am not sure I recall now.</p> <p>3 Q Your letter to the CFTC that we</p> <p>4 looked at earlier says, "Pursuant to the</p> <p>5 agreement, LBI will transfer all customer accounts</p> <p>6 including 100 percent of each customer's net</p> <p>7 equity as reflected on the books of LBI to the</p> <p>8 LLC."</p> <p>9 Do you remember that passage, sir?</p> <p>10 A Yes.</p> <p>11 Q Is it your testimony that you simply</p> <p>12 don't remember one way or the other whether</p> <p>13 affiliates are included within what you meant when</p> <p>14 you wrote to the CBTC about customer accounts</p> <p>15 being transferred?</p> <p>16 MR. LACY: He has testified about</p> <p>17 that at some point.</p> <p>18 A The affiliates would be included in</p> <p>19 the house account provision of, of that letter,</p> <p>20 not the customer provision of that letter.</p> <p>21 Q Okay. Great.</p> <p>22 A Since the affiliate would be a house</p> <p>23 account.</p> <p>24 And the permission obtained from the</p> <p>25 CFTC to transfer the house account to -- from LBI</p>	<p>1 Confidential - K. Raisler</p> <p>2 to Barclays is clear from the CFTC's letter.</p> <p>3 What I don't know, did not know then</p> <p>4 and don't recall now, was exactly what the terms</p> <p>5 of the agreement between LBI and Barclays are in</p> <p>6 terms of the -- sort of the -- not who is, if you</p> <p>7 will, responsible for those positions, who gets to</p> <p>8 own them.</p> <p>9 Q Do you know, sir, one way or the</p> <p>10 other whether or not Barclays has charged back the</p> <p>11 LBI estate for any costs incurred in connection</p> <p>12 with LBI affiliate accounts?</p> <p>13 MS. BLOOMER: Objection to form and</p> <p>14 to the use of the term "charged back."</p> <p>15 A I think I need some clarification.</p> <p>16 Q Do you know whether or not Barclays</p> <p>17 has in any way looked to the LBI estate for the</p> <p>18 costs it incurred in connection with any LBI</p> <p>19 affiliate account that was transferred pursuant to</p> <p>20 the provision in the CFTC letter of the 19th?</p> <p>21 MS. BLOOMER: Objection to form.</p> <p>22 A I don't know.</p> <p>23 Q I think we have covered it before. I</p> <p>24 just want to make sure I am not missing anything.</p> <p>25 Do you know what steps, if any,</p>

Page 198	Page 199
<p>1 Confidential - K. Raisler</p> <p>2 Barclays has taken to close out positions on the</p> <p>3 Tokyo Commodity Exchange?</p> <p>4 A I -- we talked earlier a little bit</p> <p>5 about the Ministry of Finance in Japan. My best</p> <p>6 recollection is that the positions were moved,</p> <p>7 that the customer positions were moved from the</p> <p>8 LBI affiliate in Japan to the Barclays entity that</p> <p>9 carries those positions, but that the collateral</p> <p>10 supporting the positions is tied up in the LBI</p> <p>11 affiliate bankruptcy in Japan.</p> <p>12 And there has been communications</p> <p>13 with, including the Japanese regulators, about</p> <p>14 releasing those assets. I believe that</p> <p>15 proprietary positions of LBI in Japan have been</p> <p>16 liquidated, but I don't know a lot of detail about</p> <p>17 that.</p> <p>18 Q Do you know who they were liquidated</p> <p>19 by, sir?</p> <p>20 A If they were to have been liquidated,</p> <p>21 they would have been liquidated by the exchange.</p> <p>22 Let me put a caveat on that. It also could have</p> <p>23 been liquidated by Lehman in the week prior. I</p> <p>24 don't know, because the discussions that we have</p> <p>25 had pretty much across-the-board with the foreign</p>	<p>1 Confidential - K. Raisler</p> <p>2 exchanges had been around customer positions, not</p> <p>3 house positions, as most of the house positions</p> <p>4 had been either voluntarily or involuntarily</p> <p>5 liquidated.</p> <p>6 The one complication is with those</p> <p>7 markets that don't distinguish between customer</p> <p>8 and house, you don't really know what you got.</p> <p>9 Q With respect to the Tokyo Grain</p> <p>10 Exchange, sir, do you know what steps have been</p> <p>11 taken, if any, to close out any Lehman positions</p> <p>12 there or to transfer them to Barclays?</p> <p>13 A I think the same across all of the</p> <p>14 Japanese markets. I don't recall a distinction</p> <p>15 among them. I think they are all sort of tied up</p> <p>16 in the same bankruptcy situation.</p> <p>17 Q What about the Hong Kong Futures</p> <p>18 Exchange, sir? Do you know what steps have been</p> <p>19 taken by Barclays to assume LBI's positions at the</p> <p>20 Hong Kong Futures Exchange?</p> <p>21 MS. BLOOMER: Objection to form.</p> <p>22 A I think Hong Kong, the positions</p> <p>23 moved, but the assets haven't, as I described in</p> <p>24 some other jurisdictions.</p> <p>25 Q When the positions move in a</p>
Page 200	Page 201
<p>1 Confidential - K. Raisler</p> <p>2 jurisdiction such as Hong Kong and others, I think</p> <p>3 the U.K. and Germany you described earlier, sir,</p> <p>4 did Barclays have to make any payment to the</p> <p>5 exchange in respect of any liability in respect to</p> <p>6 those positions?</p> <p>7 A That -- insofar as the positions</p> <p>8 moved to Barclays without collateral moving, there</p> <p>9 would be only two choices. One is the customer</p> <p>10 would be responsible for coming up with that, with</p> <p>11 a -- well, I'm sorry.</p> <p>12 To be clear, there are two parts to</p> <p>13 your question. One is if there is a shortfall in</p> <p>14 the account, a deficit in the account, there are</p> <p>15 two sources to fund that, the customer whose</p> <p>16 liability it is and have the customer put up the</p> <p>17 money, or you could put up the money, Barclays</p> <p>18 could have put up the money itself.</p> <p>19 The other is you would have to</p> <p>20 re-post initial margin, because the initial margin</p> <p>21 has been swallowed up in the collateral freeze of</p> <p>22 the bankrupt broker. In that case the same, you</p> <p>23 can go back to your original customer and say, I'm</p> <p>24 sorry, your money has been frozen. So if you want</p> <p>25 to continue to trade, you are going to have to put</p>	<p>1 Confidential - K. Raisler</p> <p>2 up new initial margin. Or Barclays could have</p> <p>3 funded it for them on the assumption that Barclays</p> <p>4 would get back that money at some point in the</p> <p>5 future.</p> <p>6 It's my understanding that generally</p> <p>7 Barclays put up the money in both situations I</p> <p>8 described, although I think for the most part the</p> <p>9 initial margin situation was clearer. The deficit</p> <p>10 probably would be more of a case by case.</p> <p>11 Q Were there futures that Lehman had on</p> <p>12 the Korea Exchange, sir, do you know?</p> <p>13 A There were positions in the Korea</p> <p>14 Exchange, which were discussed, and we were also</p> <p>15 trying to get monies released from there as well</p> <p>16 after the positions I think moved.</p> <p>17 Q So Barclays has transferred the</p> <p>18 positions from Lehman to Barclays at the Korea</p> <p>19 Exchange; is that right?</p> <p>20 MS. BLOOMER: Objection to form.</p> <p>21 A I think you misspoke there, but I</p> <p>22 think that the -- that Barclays as part of the</p> <p>23 purchase has been able to move the positions that</p> <p>24 were previously with Lehman to the Barclays</p> <p>25 account in Korea.</p>

Page 202	Page 203
<p>1 Confidential - K. Raisler</p> <p>2 Q When Barclays, you say pursuant to</p> <p>3 the agreement, has been able to move these</p> <p>4 positions, are you talking about the APA, sir?</p> <p>5 A It's a fair comment. I would say in</p> <p>6 aggregate all of the agreements, without trying to</p> <p>7 distinguish one versus the other.</p> <p>8 Q And I am not trying to be tricky.</p> <p>9 A Pursuant to the -- perhaps the</p> <p>10 oversimplification, would be pursuant to the</p> <p>11 bankruptcy court order approving the agreements.</p> <p>12 Q But in no case are you aware, sir, of</p> <p>13 a separate agreement other than the bankruptcy</p> <p>14 court order and any related sale documents?</p> <p>15 A There would be no -- as we discussed</p> <p>16 earlier, no separate or distinct agreement with a</p> <p>17 foreign exchange or a foreign market that I am</p> <p>18 aware of, and I would not think there would be.</p> <p>19 Q Were there also futures positions on</p> <p>20 the Malaysia Bursa?</p> <p>21 A My recollection is yes, there were.</p> <p>22 I believe that one or several of the Asian,</p> <p>23 non-Japanese Asia market exchanges did release</p> <p>24 some of the capital, some of the collateral back</p> <p>25 to Barclays. I just don't recall which markets it</p>	<p>1 Confidential - K. Raisler</p> <p>2 was.</p> <p>3 Q Who is responsible for dealing with</p> <p>4 the Japanese and Asian market exchanges that may</p> <p>5 have released back some of this collateral back to</p> <p>6 Barclays?</p> <p>7 A It would be the same operations</p> <p>8 people within Barclays that we discussed at the</p> <p>9 inception of this deposition.</p> <p>10 Q Was that something for which you also</p> <p>11 had responsibility as an outside counsel to</p> <p>12 Barclays, sir?</p> <p>13 A In the broadest sense. I was to try</p> <p>14 to get a handle on that information, and also to</p> <p>15 the extent clarification was available, clarity</p> <p>16 around a process to move those positions and the</p> <p>17 collateral.</p> <p>18 Q Did Lehman also have positions at the</p> <p>19 ICE Futures in Canada?</p> <p>20 A Yes, it did.</p> <p>21 MS. BLOOMER: Objection, asked and</p> <p>22 answered.</p> <p>23 A Again, we are talking the same --</p> <p>24 presumably we are talking the same time frame.</p> <p>25 Q Yes.</p>
Page 204	Page 205
<p>1 Confidential - K. Raisler</p> <p>2 A The week of September 15th.</p> <p>3 Q And have those positions been moved</p> <p>4 to Barclays?</p> <p>5 A My understanding is that those</p> <p>6 positions have been moved, and my best</p> <p>7 understanding is the collateral has moved as well.</p> <p>8 MS. BLOOMER: Just to clarify, we are</p> <p>9 talking about customer positions now as</p> <p>10 opposed to proprietary?</p> <p>11 MR. OXFORD: Well, I thought</p> <p>12 Mr. Raisler testified that with respect to</p> <p>13 all of the foreign exchanges, he was talking</p> <p>14 about customer positions.</p> <p>15 A I have been focused on customer</p> <p>16 positions across-the-board, that's correct.</p> <p>17 Q So the answers that you have had in</p> <p>18 response to the series of questions that I have</p> <p>19 given you were intended to refer to customer</p> <p>20 positions; is that correct?</p> <p>21 A Except where I have indicated that</p> <p>22 the customer and proprietary may be commingled, in</p> <p>23 which case it is not clear which is which, in</p> <p>24 which case positions may have moved that included</p> <p>25 proprietary positions.</p>	<p>1 Confidential - K. Raisler</p> <p>2 Q Okay, thank you.</p> <p>3 A That would not be true of Canada,</p> <p>4 where there is a distinction between customer and</p> <p>5 proprietary accounts.</p> <p>6 Q Were there also -- sorry, we have</p> <p>7 covered Singapore. Forgive me. It's getting late</p> <p>8 and warm here.</p> <p>9 Kansas City Board of Trade, I forgot</p> <p>10 whether I asked you if the positions have been</p> <p>11 moved.</p> <p>12 A We discussed the Kansas City Board of</p> <p>13 Trade. The -- as we discussed, LBI is not a</p> <p>14 clearing member of the Kansas City Board of Trade,</p> <p>15 so it cleared through another broker. That other</p> <p>16 broker, I can't remember, I think that Kansas City</p> <p>17 did not have any customer positions. It only had</p> <p>18 affiliate positions. I think those positions</p> <p>19 were, were liquidated, but the positions and the</p> <p>20 collateral did move, to my best recollection.</p> <p>21 Q Did Barclays take any steps to move</p> <p>22 Lehman proprietary futures positions to its</p> <p>23 account at any exchange or clearing organization</p> <p>24 or broker outside of the U.S.?</p> <p>25 MS. BLOOMER: Objection, lacks</p>

Page 206	Page 207
<p>1 Confidential - K. Raisler 2 foundation. 3 A I think almost all of the proprietary 4 positions had been liquidated prior to the 5 effective date of the transaction, the 22nd. The 6 only ambiguity I have around that is that some of 7 the exchanges, as I indicated, commingled customer 8 and futures, and therefore it would be difficult 9 for them to know which ones were proprietary and 10 which ones were not, and so in those markets the 11 positions might well have moved and then be up to 12 Barclays to sort out which ones were customer and 13 which ones were proprietary and either take over 14 or liquidate the proprietary positions. 15 (Continued on next page with witness 16 jurat.) 17 18 19 20 21 22 23 24 25</p>	<p>1 Confidential - K. Raisler 2 MR. OXFORD: Thank you, Mr. Raisler. 3 I don't have any questions, any further 4 questions for you at this time. 5 MR. LACY: This deposition is closed. 6 (Time noted: 3:31 p.m.) 7 oOo 8 I, KENNETH RAISLER, the witness herein, 9 do hereby certify that the foregoing testimony of 10 the pages of this deposition to be a true and 11 correct transcript, subject to the corrections, if 12 any, shown on the attached page. 13 14 KENNETH RAISLER 15 Subscribed and sworn to before me this 16 _____ day of _____, _____. 17 18 NOTARY PUBLIC 19 20 21 22 23 24 25</p>
Page 208	Page 209
<p>1 2 STATE OF NEW YORK) Pg. of Pgs. 3 COUNTY OF NEW YORK) 4 I wish to make the following changes 5 for the following reasons: 6 PAGE LINE 7 _____ CHANGE: _____ 8 REASON: _____ 9 _____ CHANGE: _____ 10 REASON: _____ 11 _____ CHANGE: _____ 12 REASON: _____ 13 _____ CHANGE: _____ 14 REASON: _____ 15 _____ CHANGE: _____ 16 REASON: _____ 17 _____ CHANGE: _____ 18 REASON: _____ 19 _____ CHANGE: _____ 20 REASON: _____ 21 _____ CHANGE: _____ 22 REASON: _____ 23 _____ CHANGE: _____ 24 REASON: _____ 25 _____</p>	<p>1 2 C E R T I F I C A T E 3 STATE OF NEW YORK) 4 : SS. 5 COUNTY OF NEW YORK) 6 7 I, BONNIE PRUSZYNSKI, a Notary 8 Public with and for the State of New York, 9 do hereby certify: 10 That KENNETH RAISLER, the witness 11 whose deposition is hereinbefore set forth, 12 was duly sworn by me and that such deposition 13 is a true record of the testimony given by 14 the witness. 15 I further certify that I am not related 16 to any of the parties to this action by 17 blood or marriage, and that I am in no way 18 interested in the outcome of this matter. 19 IN WITNESS WHEREOF, I have hereunto 20 set my hand this 1st of March, 2010. 21 22 23 _____ 24 Bonnie Pruszyński 25</p>

I N D E X

WITNESS	PAGE
KENNETH RAISLER	
BY MR. OXFORD	5, 181
BY MR. LACY	178

E X H I B I T S

Exhibit 658A Declaration of Kenneth Raisler	5
Exhibit 659-A BCISC 00009676-88	98
Exhibit 660-A BCISC 00009653-65	120
Exhibit 661-A BCISC 00009298-301	126
Exhibit 662-A BCIEXS 00116806-07	167
Exhibit 663-A SC 00003451-53	171
Exhibit 664-A September 19, 2008 e-mail plus attachment	174